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Report of the Special Rapporteur on the human rights of migrants

Note by the Secretariat

Summary

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights of migrants, prepared pursuant to Council resolution 34/21.

The present report is the first to be submitted to the Human Rights Council by the new mandate holder, Felipe González Morales, who assumed his functions on 1 August 2017. In the report, the Special Rapporteur summarizes the activities undertaken since taking up his functions, and includes a thematic study on the return and reintegration of migrants.

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Contents

		Page
I.	Introduction	3
II.	Activities of the Special Rapporteur	3
	A. Country visits	3
	B. Other activities	3
III.	Study on the return and reintegration of migrants	4
	A. Introduction	4
	B. Concepts and terminology	5
	C. International legal framework	5
	D. Current return practices and their impact on the human rights of migrants	6
	E. Migrants with particular protection needs	10
	F. Current reintegration measures and their impact on the human rights of migrants	12
	G. Monitoring mechanisms, access to justice and accountability	16
IV.	Conclusions and recommendations	17

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolutions 8/10 and 34/21. It contains information on the activities of the Special Rapporteur on the human rights of migrants since he assumed his functions on 1 August 2017, and a thematic study on return and reintegration of migrants.

II. Activities of the Special Rapporteur

A. Country visits

2. During the period under review, the Special Rapporteur undertook a visit to Nepal, from 29 January to 5 February 2018 (see A/HRC/38/41/Add.1), and plans to conduct a visit to Mali in May 2018.[1] The Special Rapporteur thanks both Governments for their cooperation before and during the visit.

3. The Special Rapporteur thanks the Government of the Niger for accepting a visit, and encourages the Government of the United States of America to respond positively to his request to conduct a visit in the second half of 2018.

B. Other activities

4. On 20 October 2017, the Special Rapporteur presented the report of the previous mandate holder on a 2035 agenda for facilitating human mobility to the General Assembly (A/72/173). Since his appointment, the Special Rapporteur has been involved in the process and development of the global compact for safe, orderly and regular migration. On 30 August 2017, he delivered the opening speech at a regional consultation in Santiago de Chile. He also took part in the sixth thematic consultation of the global compact on the theme "Irregular migration and regular pathways, including decent work, labour mobility, recognition of skills and qualifications and other relevant measures", held in Geneva on 12 and 13 October 2017. He also attended a stocktaking conference in Puerto Vallarta, Mexico, from 4 to 6 December 2017, and provided input for the report of the Secretary-General on the theme of "Making migration work for all" (A/72/643). In his contribution, the Special Rapporteur proposed ideas on how to develop the global compact, stressing the need for a strong, human rights-based, normative and institutional framework for migration within the United Nations, ensuring accountability, monitoring and oversight.

5. The Special Rapporteur participated in regional and international conferences, including as a panellist at a seminar on justice and migration organized by the Office of the National Public Defender and the Inter-American Court of Human Rights in Santiago de Chile, on 8 August 2017. He gave a lecture on migration standards at the Universidad Nacional Autónoma de Mexico in Mexico City, on 7 September 2017; a keynote lecture on migration, entitled "Challenges for the international community", at the University of Texas in Austin, United States of America, on 4 October 2017; and a keynote lecture on "Migration, State obligations and rights in a globalized context" at the University of Geneva, on 12 October 2017. He participated from 20 to 23 November 2017 in an induction session organized for new special procedure mandate holders by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva.

6. On 24 January 2018, the Special Rapporteur gave a keynote speech at the Interparliamentary Committee Meeting on the theme "The European Agenda on Migration: What about legal avenues and integration?", organized by the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament in Brussels.

[1] The Special Rapporteur will submit a report on his visit to Mali to the Human Rights Council at its forty-first session.

7. In three working visits to Geneva and one to New York, the Special Rapporteur held initial consultations with multiple stakeholders relevant to his mandate, including the co-facilitators of the global compact, the co-chairs of the Global Forum on Migration and Development, representatives of OHCHR, the International Organization on Migration (IOM), the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the Special Representative of the Secretary-General on Violence against Children, special procedure mandate holders, ambassadors, academics and representatives of non-governmental organizations.

8. During the period under review, the Special Rapporteur sent 30 joint communications (see A/HRC/37/80). He also issued several press releases on the situation of migrants in Israel, Libya and the United States of America, and on, inter alia, the international days of migrants and against racism, prior to the stocktaking conference in Puerto Vallarta.

III. Study on the return and reintegration of migrants

A. Introduction

9. In recent years, there has been an increased focus on the return of migrants to the detriment of other migration policy options, such as regularization, social inclusion or the expansion of regular pathways. In general, the political sensitivity of irregular migration and the increasing securitization and criminalization of cross-border movements of people outweigh the actual scope and impact of irregular migration.[2] In this context, the proliferation of readmission agreements is an issue of concern. Under the broad auspices of more efficient and effective migration management, States increasingly conduct push and pull-back operations and adopt bilateral and regional readmission agreements. Furthermore, countries of origin and third countries with weak rule of law and poor asylum systems continue to turn back migrants, counter to international human rights norms and standards, which include the prohibition of collective expulsions and the principle of non-refoulement.

10. Returns are often not desirable or even feasible options for migration management. Return efforts are expensive, difficult to implement and problematic to carry out in accordance with human rights law. Moreover, if return programmes are not coupled with robust reintegration programmes, and where root causes for irregular migration persist, migrants, including those previously returned, would still undertake perilous journeys (A/72/643, para. 39).

11. In his 2035 agenda for facilitating human mobility, the previous mandate holder proposed eight mobility goals, inter alia, goal 3, on ensuring respect for human rights at border controls, including return, readmission and post-return monitoring, and establishing accountability mechanisms (A/72/643, para. 40).

12. In his study, the Special Rapporteur examines current return and reintegration practices, their compliance with international human rights norms and standards, and their impact on the human rights of migrants, including migrants with particular protection needs. He also makes recommendations on ensuring that returns are conducted in safety, with regard to dignity and respect for human rights, on the basis of the primacy of voluntary returns, cooperation between countries of origin and reception, and enhanced reception and sustainable reintegration assistance for those who are returned.

13. The study was informed by submissions from international organizations and non-governmental organizations, and contributions from international experts. The Special Rapporteur also participated, on 6 March 2018, in an expert meeting on protecting the

[2] Platform for International Cooperation on Undocumented Migrants (PICUM), submission to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, April 2013.

human rights of migrants in the context of return, organized by OHCHR and held in Geneva. It is also based on observations made during the Special Rapporteur's country visits, communications received from individuals and non-governmental organizations, and research conducted by lawyers of the Diego Portales University.

B. Concepts and terminology

14. There is no international definition of "return" in the context of migration. The most recent definition was proposed by the Global Migration Group in its principles and practical guidance on the protection of the human rights of migrants in vulnerable situations, prepared pursuant to Human Rights Council resolution 35/17 (A/HRC/37/34 and Add.1). According to the principles and guidance, a "return" is an "umbrella term to refer to all the various forms, methods and processes by which migrants are returned or compelled to return to their country of origin or of habitual residence, or a third country. This includes [...] deportation, expulsion, removal, extradition, pushback, handover, transfer or any other return arrangement." They add that "the use of the term return provides no determination as to the degree of voluntariness or compulsion in the decision to return, nor of the lawfulness or arbitrariness of the return" (A/HRC/37/34/Add.1, chap. V).

15. According to IOM, "assisted voluntary return" is the "administrative, logistical, financial and reintegration support to rejected asylum seekers, victims of trafficking in human beings, stranded migrants, qualified nationals and other migrants unable or unwilling to remain in the host country who volunteer to return to their countries of origin."[3] Voluntary returns are not always assisted, and returnees can be compelled to resort to "voluntary" return to avoid deportation, detention or destitution.[4]

16. Similarly, there is no agreed definition of the term "reintegration". Effective reintegration programmes depend largely on the voluntary character of returns, and may ultimately contribute to decreasing re-emigration rates.[5]

17. In general, the terms "return", "deportation", "expulsion", "repatriation" and "removal" are used interchangeably to describe the process of sending back or returning persons to their country of origin or habitual residence. Their common feature is a lack of genuine, fully informed and valid consent, thus the lack of voluntariness.

18. For the purpose of the present report, the term "return" refers to all acts by which persons are sent to a third country without their free and informed consent. Apart from coercion, the lack of alternatives to return will also determine the free character of the voluntariness, and therefore the boundaries between forced and voluntary returns.

C. International legal framework

19. The Universal Declaration of Human Rights and the core international human rights treaties provide the legal framework for non-discrimination and the protection of the human rights of all human beings, including migrants, regardless of their status and where they are. Article 13 of the Declaration states that everyone has the right to leave any country, including his or her own, and to return to his or her own country. Article 2 of the International Covenant on Civil and Political Rights requires States to ensure that the rights recognized in the Covenant are enjoyed by all individuals who are within its territory and/or subject to its jurisdiction, without distinction of any kind.

20. In the context of migration, States must also respect the right to be free from torture and ill-treatment without any discrimination.[6] The prohibition of torture and ill-treatment is further developed by the absolute and non-derogable principle of non-refoulement, which

[3] IOM, *Glossary on Migration*, International Migration Law Series, No. 25, 2011, p. 11.

[4] Caritas Europa, "Human rights and human dignity at the centre of return policies", position paper, 9 February 2018.

[5] Ibid.

[6] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1.

prohibits States from deporting any person to another State's jurisdiction or any other territory where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment[7] or other serious human rights violations, or where there would be a real risk of such violations (see A/HRC/37/50). Therefore, the principle of non-refoulement also applies in cases of return to situations of socioeconomic deprivation (namely, the return should not proceed in cases where it would imperil the right to health of the returnee).[8]

21. Concerned at the growing use of detention in the context of migration, the Working Group on Arbitrary Detention stressed in its revised deliberation No. 5 of liberty of migrants that any form of administrative detention or custody for migrants must be used as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose. Automatic or mandatory detention and indefinite detention are arbitrary. The Working Group added that persons detained in the course of migration proceedings enjoy as a minimum the same rights as those detained in the criminal justice or other administrative context, and that migrants have the right to bring proceedings before a court to challenge the legality of their detention and to obtain appropriate remedies if their challenge is successful.

22. In their recent joint general comments on the human rights of children in the context of international migration, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families recalled that the detention of children based on their migration or refugee status was never in their best interests, and that alternatives to deprivation of liberty must be found instead, including family-based solutions.[9]

23. In addition to the core international human rights treaties, other international instruments that protect the human rights of migrants with particular protection needs include the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143), the Convention relating to the Status of Stateless Persons and the Convention on the Rights of Persons with Disabilities.

D. Current return practices and their impact on the human rights of migrants

24. The human rights consequences of being the subject of voluntary or forced return procedures are vast. Persons in forced return procedures are issued an entry ban, lose their right to emergency shelters, become subject to detention and lose the possibility of obtaining a residence permit through regularization programmes. Asylum seekers cannot be expected to comply with the demands for their return as long as appeal procedures for asylum applications are still pending.[10] Destination countries place the responsibility to

[7] Ibid., art. 3 (1).

[8] Vladislava Stoyanova, "How exceptional must 'very exceptional' be? *Non-refoulement*, socio-economic deprivation, and *Paposhvili v Belgium*", *International Journal of Refugee Law*, vol. 29, No. 4 (30 December 2017), p. 580.

[9] Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration; joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

[10] "Deported: human rights in the context of forced returns – Summary", Amnesty International Netherlands, July 2017.

leave the country on migrants themselves, even though many rejected asylum seekers originate from countries that are relatively poor in terms of freedom, safety and living standards. Once a person is considered non-compliant, the "voluntary" return procedure is ended and a forced return process is initiated. In practice, it is not always sufficiently clear which actions or omissions result in a person being classified as non-compliant.[11]

1. Return policies

25. Returns to countries of citizenship or prior residency are an integral part of current migration policies and are a "globally ascendant practice".[12] Political pressure to increase deportation rates poses risks for the respect of human rights. Over the past few years, destination countries have labelled a large number of countries of origin of refugees and persons with protection claims as being "safe". Asylum seekers from listed countries are confronted with accelerated asylum procedures, a higher burden of proof in asylum applications and the rule that their appeals do not have a suspensive effect.[13]

26. In the European Union, standards and procedures applicable to persons subject to a return decision are regulated by Directive 2008/115/CE, which requires States members of the European Union to issue a return decision to undocumented migrants, unless their status is regularized. In 2017, the European Commission adopted a new action plan and recommendation for Member States on how to best implement the return directive with a view to achieving more effective return procedures. Member States are required to make the most of the flexibility offered by the return directive, including by limiting safeguards and expediting the asylum procedure by rationalizing (namely, restricting) legal remedies.[14]

27. Numerous human rights concerns have been raised with regard to the practices adopted in certain States members of the European Union in their procedures to return undocumented migrants to their countries of origin. According to information provided in a position paper on the directive by the Platform for International Cooperation on Undocumented Migrants, these practices include the use of systematic and prolonged detention, the detention of children and their families, violence and violations of the principle of non-refoulement during removal procedures, lack of access to justice and redress mechanisms, and the lack of effectiveness of return policies. In this regard, the Fundamental Rights Agency of the European Union has stated that, while States have a right to control immigration, certain enforcement measures such as reporting obligations, data-sharing or arresting migrants in front of schools have a negative and often disproportionate impact on the human rights of irregular migrants.[15]

28. Strengthened immigration enforcement efforts in the United States of America and tighter border security measures also threaten to increase the return of migrants from the United States to Mexico and the Northern Triangle. While deportations to Mexico and Central America did not increase in 2017, apprehensions of undocumented immigrants in the United States increased by 40 per cent in the first seven months of 2017 over the figures for 2016. Phasing out the Deferred Action for Childhood Arrivals and the Temporary Protected Status protection programmes threatens to have a significant impact on the potential return of migrants and asylum seekers or their families to Mexico and Central America.

29. Assisted voluntary return programmes are also a central component of prevailing migration management policies. The programmes, which are aimed at assisting States to address the practicalities of the return process, are mainly administered by IOM, though other smaller providers are also involved.[16] Returns of this type are faster and less

[11] Ibid.

[12] Daniel Kanstroom, "Deportation as a Global Phenomenon: Reflections on the Draft Articles on the Expulsion of Aliens", *Harvard Human Rights Journal ILC Forum Essays*, 2016.

[13] "Deported: human rights in the context of forced returns" (see footnote 10).

[14] Caritas Europa, "Human rights and human dignity" (see footnote 4).

[15] Solidarity, "Fundamental rights of migrants in an irregular situation in the European Union", European Union Agency for Fundamental Rights, 2011.

[16] Assisted voluntary return and reintegration has become a central component of migration policies in

expensive than forced removal, and do not require the approval of the country to which the migrant is returned.[17]

30. In general, the conditions under which migrants request assisted voluntary return do not allow for the return to be qualified as voluntary, as they do not fulfil the requirements of a fully informed decision, free of coercion and backed by the availability of sufficient valid alternatives, such as temporary permits for work, study or humanitarian purposes, or opportunities for permanent residence or citizenship. Some migrants request assisted voluntary return out of despair, to avoid deportation, or because they are held in detention — some indefinitely, because of slow and complicated family reunification and asylum procedures, the risk of becoming destitute, poor reception conditions or withdrawal of social support.[18] The Special Rapporteur notes that States and other stakeholders who carry out returns under an assisted voluntary return programme to States that are not safe and in which migrants may face violations of their fundamental human rights may be in violation of the principle of non-refoulement.

2. Readmission agreements

31. Since the 1990s, there has been a proliferation of readmission agreements between destination countries and countries of origin and transit or readmission clauses in cooperation arrangements. These agreements constitute a means to overcome the practical and procedural obstacles to readmission that result when migrants are insufficiently documented and requested States are uncooperative.[19] They specify the obligation of States to readmit their own nationals, and often include conditions to readmit citizens of third countries. They also include a list of means of evidence requiring a requested State to recognize nationality, and an obligation to issue a travel document within a certain time limit.[20] There are concerns, however, that readmission agreements include clauses that facilitate the issuance of documents to returnees in exchange for incentives for third countries, such as visa facilitation, trade facilities and development aid.[21]

32. New informal deals or arrangements, also known as "flexible cooperative frameworks", have flourished in recent years as most third countries are reluctant to engage in negotiations on readmission agreements owing to public hostility. Such arrangements have been criticized for increasing the legal uncertainty with regard to the terms of the accords, thereby impeding proper democratic accountability and judicial oversight, and diluting responsibilities and procedural safeguards.[22]

33. The recourse to "safe third country" policies is another worrying trend. The aim of these policies is to allow for the rejection of protection of asylum seekers who have allegedly already found protection in a third country or who have travelled through a third country where it would have been possible to seek protection while considered "safe".[23]

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many destination countries; for example, 83 per cent of cases of assisted voluntary return and reintegration facilitated by IOM come from the European Economic Area. See IOM, *Assisted Voluntary Return and Reintegration: 2016 Key Highlights*, Geneva, 2017.

[17] Katie Kuschminder, "Taking Stock of Assisted Voluntary Return from Europe: Decision Making, Reintegration and Sustainable Return – Time for a paradigm shift", EUI Working Papers, European University Institute, June 2017.

[18] For instance, in the case of Australia, the option of remaining in Nauru or Papua New Guinea indefinitely and under conditions that amount to inhumane or degrading treatment, or to resettle in Cambodia through the assisted voluntary return scheme cannot be considered an option free of coercion (see A/HRC/35/25/Add.3).

[19] Nils Philip Coleman, *European Readmission Policy: Third Country Interests and Refugee Rights*, Immigration and Asylum Law and Policy in Europe, vol. 16, 2008.

[20] Ibid.

[21] Caritas Europa, "Human rights and human dignity" (see footnote 4).

[22] See Jean-Pierre Cassarino and Mariagiulia Giuffré, "Finding its Place in Africa: Why has the EU opted for flexible arrangements on readmission?", University of Nottingham, Human Rights Law Centre, December 2017.

[23] For instance, in the framework of the European Union-Turkey Statement, Greece may reject asylum applications of persons who passed through Turkey as being inadmissible and shift the responsibility of merit assessments to Turkey. See Maybritt Jill Alpes, Sevda Tunaboylu, Orcun Ulusoy and Saima

These returns are often made without an individual assessment of possible risks faced upon deportation, at the expense of returning migrants and asylum seekers to countries where they risk serious human rights violations. They are thus contrary to the principle of non-refoulement.

34. The trend towards the externalization of migration management to border countries by means of return and readmission agreements raises many concerns from a human rights perspective. Such agreements often lack not only a clear legal status but also transparency, culminating in a lack of accountability and human rights monitoring;[24] as a result, the human rights of migrants are frequently violated in such agreements.

3. Removal procedures and the principle of non-refoulement

35. When a decision to deport is not taken with due care — for example, following a comprehensive and effective assessment of individual risks — the return can lead to serious human rights violations, including refoulement. Even though most abuses and violations are committed in the context of forced returns, they are also suffered by migrants who opt "voluntarily" for assisted return. Persons can be subject to different types of risk, such as economic and psychosocial risks, insecurity and threats, and refoulement.[25] States may also use deportations to limit the duration of labour migration, making family reunification impossible and seriously hampering access to decent work, services and justice.

36. Authorities of deporting States should be aware of post-deportation risks;[26] reports on the country of origin do not, however, often address such risks, or only do so to a very limited degree. Information of this type is essential for decisions on the granting of asylum and for the preparation of return processes. Furthermore, most Governments do not investigate what happens after people are returned to countries of transit and origin. Little information is in fact available about what the handling by State officials when deportees arrive; the impact of emergency travel documents on the security of deportees; the implementation of exit laws (which sometimes criminalize emigration in countries of origin and transit); or the fate of persons who have been returned to a country of transit rather than to their country of nationality.[27] Travel documents that are incomplete or not recognized can have negative consequences for deported persons upon arrival in countries of origin, and emergency travel documents produced by the deporting State do not offer guarantees for their access to national identification documents, a situation that entails the risk of statelessness. Sensitive personal information (regarding for example the identity of the asylum seeker, criminal records, health or sexual orientation) should not be shared with authorities from countries of origin in order to protect the life, security and privacy of the persons concerned and their families.

37. The timely preparation of return processes and the presence of embassy staff or liaison officers from deporting States or from local non-governmental organizations can help to prevent abuses against deported persons upon their arrival. The time and place of arrival by air or land are also crucial to a person's security upon return.[28] Since returns may involve many hours of travel, migrants should have access to water and bathroom facilities, and not be constrained in their physical movement (for example, by the use of restraints).

Hassan, "Post-deportation risks under the EU-Turkey Statement: what happens after readmission to Turkey?", European University Institute, Migration Policy Centre, November 2017.

[24] "Deported: human rights in the context of forced returns" (see footnote 10).

[25] Jill Alpes and Ninna Nyberg Sørensen, "Post-deportation risks: people face insecurity and threats after forced returns", Danish Institute for International Studies, Policy Brief, November 2016.

[26] See also the draft articles on the expulsion of aliens adopted by the International Law Commission (*Official Records of the General Assembly, Sixty-ninth session, Supplement No. 10* (A/69/10)), which stress the importance of the principle of non-refoulement and human rights of persons subject to expulsions.

[27] See "Post-deportation risks: a country catalogue of existing references", Stichting LOS, October 2017.

[28] For instance, the Governments of the United States of America and of Mexico signed local repatriation agreements in 2016 that prohibit repatriations along their common border between 10 p.m. and 5 a.m., and include specific provisions for the safe repatriation of children and families.

Timely communications between government agencies of the countries concerned, and individual assessments of the specific needs of returnees (such as medical assistance or communication with relatives) are also critical to ensure safe return and that migrants receive the assistance they require.

38. In the context of forced deportation, detainees are particularly vulnerable to risks of ill-treatment and torture. A number of legal and procedural safeguards can assist in effectively preventing serious human rights violations, such as (a) individual medical screenings by qualified professionals prior to deportation; (b) access to detention records to enable persons to make timely and accurate complaints about their treatment; (c) strict limits on the use of force, which should only be used as a last resort, and be necessary and proportionate to individual circumstances; (d) the use of limited means of restraint, which should be used only as a last resort, to the least extent necessary, and be removed at the earliest opportunity; and (e) appropriate selection and assessment of and specific training for escort staff.[29]

4. The use of detention, including detention of children and their families

39. The fact that detention is extensively used as a tool of border management and deterrence tool against migrants, and too often as a means to prevent their access to justice, is a worrying trend (A/72/173, para. 57). While progress has been made in some countries, detention of migrants has largely become a systematic part of migration management across entire regions. The increasing use of detention for migration purposes is not systematically accompanied by legal guarantees or human rights protection for detained migrants.

40. Experience has shown that detention does not deter irregular migration, nor does it increase the effectiveness of removal procedures; it only increases the suffering of migrants, and may have a long-term detrimental impact on their mental health. Furthermore, detention has no influence on the choice of destination country, nor does it lead to a reduction in the number of irregular arrivals. Evidence has also revealed the high costs and low effectiveness of lengthy detention when used as a tool for migration management.[30]

41. According to international human rights norms and standards, children should never be detained for immigration purposes, nor can detention be justified as being in a child's best interests.[31] The European return directive nonetheless allows for the detention of children as a measure of last resort and for the shortest appropriate period of time, in violation of international child rights norms and standards.[32]

E. Migrants with particular protection needs

42. States have a legal obligation to pay special attention to migrants with particular protection needs, such as children, victims of trafficking, persons with disabilities, older persons and persons with medical needs. The vulnerability of these migrants may be related to the reasons for leaving their countries of origin, the situations that they encounter during their journey and destination, and their identity, condition or circumstances.

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[29] "National preventive mechanisms: monitoring the force deportation flights of migrants", Association for the Prevention of Torture, March 2012. See also "Twenty Guidelines on Forced Return", adopted by the Committee of Ministers of the Council of Europe on 4 May 2005.

[30] Platform for International Cooperation on Undocumented Migrants, Position Paper on EU Return Directive, April 2015.

[31] See joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration; joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

[32] OHCHR, "UN Child Rights Experts call for EU-wide ban on child immigration detention", press release, 21 February 2018.

43. The forced return of a child has a negative impact on, inter alia, the child's development, health and education. According to information the Special Rapporteur received from Defence for Children International, a non-governmental organization, children are often forced to return with their families after having lived in their host countries for years. The rights of a child with deep social ties to the child's destination country who applies for regularization should not be undermined by lack of compliance by the child's parents.[33] States have an obligation to handle applications by a child or the child's parents to enter or leave a State for the purpose of family reunification in a positive, humane and expeditious manner,[34] and allow regularization through family reunification.

44. The best interests of the child should be the paramount consideration in decisions relating to return. A formal procedure to determine best interests should be conducted with certain safeguards, for example, with the meaningful participation of authorities responsible for child protection, and the right of the child to be heard and to have competent and independent legal representation (see A/HRC/37/34, principle 6, guideline 6). Where return is deemed not to be in the child's best interests, families should be kept together in the country of residence. When unaccompanied and separated children are returned, countries of origin and destination should cooperate to continue family tracing efforts after return (ibid., guideline 7). Safety and the designation of appropriate caregivers for children should be prerequisites to return. Return should not cause children to become homeless, nor should children be housed in orphanages or residential care facilities, or held in any situation that could compromise their development or lead to social exclusion (ibid., guideline 8). In the case of families with children, the government authorities responsible for processing returns should ensure that children are not separated from immediate family members in the return process.

45. In general, there are concerns that forced return programmes that lack appropriate mechanisms for screening indicators might include large numbers of suspected victims of trafficking. In particular, the risk of non-detection increases when countries do not have procedures for proactive detection and officials lack the necessary training. When cases of trafficking are identified, no clear guidance is available within the social protection system when a return has already been processed. The risk that victims of trafficking run of exposure to reprisals and re-victimization also increase, given that they can be recontacted by trafficking networks after their return. Returned victims of trafficking are often stigmatized and subject to discrimination, and may suffer from psychological disorders (see A/HRC/38/45).

46. States should adopt measures offering comprehensive protection for migrants with disabilities, including those who acquire a disability in transit or destination countries. Such measures should include the prohibition of detention, unhindered access to health and social services and a comprehensive assessment of individual protection needs before any decision on return is made. Similarly, countries of origin and destination should introduce comprehensive return and reintegration programmes for migrants who return with a disability. Host countries should adopt prevention policies and create safe working conditions, and refrain from cancelling residence and/or work permits and returning migrants who have acquired a disability in the workplace.

47. Return policies and practices affect women and girls differently. The Special Rapporteur received allegations concerning proposed regulations to deport pregnant migrant workers, which could in turn compel women in such a situation to seek unsafe abortions (A/HRC/26/35, para. 54). Migrant women who work as domestic workers are also more vulnerable to sexual harassment, abuse and violence, including rape, and face loss of access to essential services and even deportation if they file a complaint. In order to address the particular protection needs of women and girls in the context of returns, States should address the root causes of exploitation rather than restrict the mobility of migrants

[33] "Deported: human rights in the context of forced returns" (see footnote 10).

[34] See Convention on the Rights of the Child, art. 10 (1), and general comment No. 6 (2005) of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin, para. 83.

perceived as "vulnerable". Similarly, States should provide access to justice, including safe reporting, for all migrants, and pay special attention to those who have subjected to exploitation, criminal acts, sexual or gender-based violence or other types of violence.

F. Current reintegration measures and their impact on the human rights of migrants

1. Reintegration policies

48. The factors influencing a person's ability to reintegrate into his or her community are often similar or equal to the "push" and "pull" factors that led to the decision to migrate in the first place. Such factors include poverty, violence and discrimination, lack of access to rights and poor governance in countries of origin, the adverse effects of climate change and environmental degradation, labour needs and family reunification in the destination country (A/HRC/35/25, para. 28). There may, however, be additional factors, such as the trauma experienced during the journey or in the destination country, or the stigma endured upon return or because of the migration experience.

49. States, academia and policymakers use different definitions and indicators for "sustainable return", such as reintegration into the economic, social and cultural process in the country of origin, the level of fear of persecution and violence experienced by returnees, or the number of returnees choosing to remigrate.[35] States, in particular destination countries, often measure the success of a return by the extent to which it can serve as a deterrent to other aspiring migrants.

50. In full recognition of the right to freedom of movement and the right to leave a country, including one's own, the Special Rapporteur refrains from terminology that would measure returns and reintegration with success factors, qualifying a return as "sustainable" and reintegration as "successful", given that a person may not want to remigrate, but may nevertheless not have (in his or her own perception) fully reintegrated.

51. In the context of well-governed migration policy, return may be one step in the migration cycle, but it is not necessarily the end of the process. Otherwise, "migration management" would merely become a policy of containment rather than one of human mobility in full respect of dignity and human rights.

52. More awareness and research on how returned migrants can reintegrate into their country of origin is required. Reintegration is possible only if the return has been truly voluntary, informed, free of coercion and with consideration of sufficient and valid alternatives to regularize a stay or to grant access to citizenship, and where the return has not been the only way out of exploitation and abuse in the destination country.

53. The Special Rapporteur recognizes the efforts made and the need to assist migrants in their reintegration process. Destination countries, countries of origin, civil society organizations, United Nations agencies, IOM and other stakeholders should be guided by a human rights-based approach to return and reintegration policies. They should only engage following a due diligence process that assesses the voluntariness of the return. Any programme for assisted voluntary return and reintegration should comprise a transparent, credible and public monitoring and evaluation system, also with regard to financial transparency and accountability.

2. Reintegration measures and challenges

54. States should ensure that all cooperation across borders promotes a human rights-based approach to migration governance. They should take all possible measures to enable returning migrants to enjoy their human rights, including to benefit from their entitlement to social protection, health care, an adequate standard of living, decent work, education and access to justice. Returning and receiving States should provide effective and tailored reintegration programmes that address the different needs of returnees, on the basis of age,

[35] See Kuschminder, "Taking Stock of Assisted Voluntary Return from Europe" (see footnote 17).

gender and other factors. All reintegration policies should be subject to continuous evaluation (A/HRC/37/34, principle 6, guideline 8). To mitigate the risks that returnees may face, the preparedness of migrants prior to their return is essential.

55. States should cooperate to ensure the transfer of benefits, income, property, savings, skills and credentials, and provide non-mandatory options for participatory pre-departure and reintegration assistance for migrants choosing to return, especially for those who are vulnerable, have special needs or are in a situation of an emergency evacuation or large-scale repatriation.[36]

56. Countries of origin should also create the conditions necessary for return by incorporating measures based on reintegration needs into national development planning, creating employment opportunities, providing skills recognition and training, and steps to allow the restitution of property.

57. The Special Rapporteur notes that civil society in both countries of destination and countries of origin make an important contribution to facilitating preparedness and reintegration of migrants. States, as duty bearers, however, have the responsibility to fulfil their obligations under international law in this regard.

(a) Integration at the individual, family and community levels

58. Reintegration should be addressed at the individual, family and community levels. Returnees may face multiple challenges; each returnee should therefore receive an individualized response, with special attention paid to groups with particular needs, such as children, victims of trafficking, persons with disabilities, older migrants, and persons with medical needs. In this regard, shelter and other accommodation options, medical care, psychological assistance, including family counselling, legal assistance, education, vocational training, economic assistance and livelihood opportunities should be made available.

59. Economic advantages or assistance provided solely to returnees can lead to tension within a community. It is therefore important to ensure that reintegration assistance is balanced and that investments are made in the receiving communities in countries of origin, to avoid social conflict and to reinforce sustainable community development and stability. Reintegration programmes should link with national, regional and international development plans and include local economic development strategies. Prior to the return of migrants, an assessment of the labour market, institutional capacities, prevailing socioeconomic and environmental conditions, services and infrastructure should be carried out.

60. Reintegration into family and community structures can be challenging: after several years of absence, the family and community may have evolved while the migrant may have become accustomed to different cultural norms and a different work environment. Reintegration policy should also take into account social resolution issues from a family and community perspective.

61. Facilitating reintegration requires programmes to focus on both returnees and the communities of origin to which they will return, including pre-arrival activities with host communities to ensure that reintegration benefits all. Particular focus should be put on social integration and the importance of social cohesion and stability within receiving communities.

62. Awareness-raising campaigns, targeting the public at large, as well as employers, trade unions and other stakeholders, should be developed in countries of origin. When well designed, such campaigns can contribute to a better understanding and acceptance of returnees, including of their needs and expectations in the labour market, and address possible types of discrimination, thereby facilitating more effective and sustainable integration.

[36] See Now and How, "Ten Acts for the Global Compact: a civil society vision for a transformative agenda for human mobility, migration and development".

(b) Effective access to health care

63. Prior to any return, destination countries should verify that adequate health care is effectively available. All returnees should be provided with medical documentation and a supply of medication in order to ensure that any treatment they are undergoing is not interrupted.

64. Some migrants experience depression or trauma as a result of violence and abuse endured during their migration, or face difficulties in their home country and decide to migrate internally or remigrate abroad. Their specific needs should be addressed and psychosocial counselling made available to facilitate their reintegration in their home community.

(c) Access to education, employment and an adequate standard of living

65. Children enrolled in schools in countries of destination should be able to complete the education cycle in which they are enrolled.[37] Prior to any return, States should ensure that secondary education is available in the country of origin. Children, who might otherwise face difficulties in continuing their education or training upon their return to their country of origin, should receive education certificates, regardless of status.[38]

66. In the country of origin, school systems should accelerate their consideration of school reports from other countries in order not to delay or interrupt education. Teachers and administrators at schools receiving returning children or children returned with their families should receive special sensitivity and cultural training: in the context of immigration, children of returnees often have fewer opportunities than the second or third generations, which benefit most in terms of economic and cultural capital from the migratory experience.[39]

67. Migrants are often returned to countries that are in full expansion and where emigration is widespread, making the reintegration of returnees nearly impossible. In the light of the demographic shifts of important destination countries and considering that the large majority of migrants are of working age (in 2017, 74 per cent of all international migrants were aged between 20 and 64 years),[40] return and reintegration can be particularly challenging for migrants; local economies might not be able to absorb the local workforce, and only limited employment opportunities available.

68. Economic reintegration activities, such as vocational training, business support or other income-generating activities, should be conducted. Any skills acquired abroad should be recognized and put to use. The capacity of absorption of the labour market and income-generating opportunities for the host community and returnees should be increased. In order to ensure an adequate standard of living, public services should be made available.

(d) Portability of pension, health and social security benefits

69. Many migrants are not eligible for social security benefits either in the country of destination or in the country of origin. Migrant returnees frequently risk losing their entitlement to social security benefits in their home country because of their absence, while at the same time encounter restrictive conditions under the social security system of their country of employment. The portability of social security for migrants who wish to return to their home country is also problematic. Access to social security is particularly difficult for irregular migrants who, though often not able to participate in contributory schemes, contribute to the financing of social protection schemes by paying indirect taxes. In addition, residency requirements in certain countries deprive temporary migrants of access to social security for long periods of time (A/HRC/26/35, para. 44).

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[37] See European Court of Human Rights, *Vikulov and others v. Latvia*, judgment, 25 September 2012.

[38] See Ryszard Cholewinski, Study on obstacles to effective access of irregular migrants to minimum social rights, Council of Europe Publishing, 2005.

[39] Parvati Nair, "Homeward Bound? Questions on Promoting the Reintegration of Returning Migrants", *UN Chronicle*, vol. L, No. 3, September 2013.

[40] Department of Economic and Social Affairs, International Migration Report 2017, p. 17.

70. Bilateral agreements are a first step towards the portability of social security entitlements. Such agreements, however, often apply only to regular migrants. The availability of and access to portable pensions can be crucial for the decision of migrant workers on whether to retire in the country of origin or of destination.[41]

(e) Stigma due to migration

71. Returnees may face large debts, incurred in the payment of recruitment fees and loans or in payments made to smugglers. If the migratory project has not been successful and the migrant not managed to send remittances or returns without savings, reintegration may become a challenge. In addition, returnees may be poorly perceived by their families and communities, particularly if funds had been mobilized to finance the migrant's journey. Communities and families may also need to identify new alternative sources of income after having lost those previously assured by remittances.

72. Returnees may face stigma and discrimination in their own community as a result of their failed migration experience, and decide to settle elsewhere in their country of origin. Migrant women may face additional stigma where their migration is associated with sexual exploitation. Their return can be particularly challenging when attempting to rejoin the family and to reintegrate into the community structure. During his visit to Nepal, the Special Rapporteur noted that migrant women returning from the Middle East or Malaysia faced additional challenges because of their migratory experience. For women in need of help, there are insufficient shelters providing comprehensive psychosocial support and reintegration assistance (see A/HRC/38/41/Add.1). In some communities, returning young men are perceived as having failed to meet their gendered role as family providers, which may also add to the stigma against them.

73. Migrants who have been deported may be subjected to additional human rights abuse and stigma. The fact that they were forcibly removed raises concern not only in the authorities but also among family members and the larger community that they may have committed a crime in the destination country. Many deportees face mistreatment, arbitrary detention and violence, intimidation, extortion, confiscation of property by government officials, statelessness, homelessness, lack of access to work, medical care and education. In many countries, returnees from Europe are suspected of being spies and subsequently receive threats. In other countries, irregular departure is a criminal offence; deportees run the risk of a prison term upon their return to their country. In such cases, deportation becomes a significant barrier to reintegration.

(f) Well-governed mobility policies as a prerequisite to reintegration

74. Studies show that restrictive migration policies in a destination country undermine return programmes and may undermine prospects for reintegration upon a migrant's return. Living and working conditions in the host country play a preponderant role in reintegration. The ability to secure employment and to have access to independent housing and the freedom to develop social contacts while abroad are likely to be important factors in supporting the reintegration of returnees.[42] A study on returnees to Nigeria showed that migrants who had been able to stay in their country of destination for as long as they desired were less inclined to remigrate; instead, they were more focused on readjusting to life in Nigeria.[43]

75. Well-governed and effective migration policies would mitigate most of the risks that returnees face while respecting fully the human rights of migrants, including when facilitating reintegration. In order to enhance their ability to reintegrate, returning migrants

[41] Nurulsyahirah Taha, Karin Astrid Siegmann and Mahmood Messkoub, "How portable is social security for migrant workers? A review of the literature", *International Social Security Review*, vol. 68, No. 1, January-March 2015.

[42] World Bank Group, "Migration and remittances: Special topic: return migration", Washington, D.C., October 2017.

[43] Jenny Pennington and Brhmie Balaram, "Homecoming: return and reintegration of irregular migrants from Nigeria", Institute for Public Policy Research, April 2013.

should be able to enjoy all their human rights, including those to an adequate standard of living, access to education, health care, decent work and justice in both transit and destination countries. Migrants who benefit from comprehensive human rights protection throughout their migration journey are more likely to reintegrate. A study on Sri Lankan returnees showed that individuals who had negative experiences abroad, such as harassment or the non-payment of wages, were less likely to successfully reintegrate economically and socially.[44]

76. For reintegration to be successful, governance of migration should be strengthened, while more options for regular, safe, affordable and accessible migration should be created. Opening up more channels for migrants at all skill levels would allow people to look for work on the regular labour market. The Special Rapporteur notes that abolishing sponsorship-based temporary migrant worker programmes and providing open work visas would make migration and return a free choice, and thereby help to assure the success of reintegration. Sufficient channels should similarly be created to allow migrants to reunite with their family, and for education and humanitarian needs.

77. In the absence of sufficient regular migration channels, many migrants stay beyond the validity of their visa or migrate irregularly; once they reach the destination country and despite often exploitative and abusive conditions, they usually try to avoid return until they have achieved their migration aspirations and goals. If they are returned, remigration, including internal migration, is often the next step, as the same socioeconomic situation that compelled them to leave in the first place still awaits them in their country of origin. States should increase resettlement options and establish common and accessible visa and work permit regimes, including options for circular migration, which would allow for re-entry after return. Studies have shown that offering opportunities for multiple entry and/or securing the residence status in destination countries can facilitate temporary or permanent return, since this generally makes re-entry after return possible.[45]

G. Monitoring mechanisms, access to justice and accountability

78. Returning and receiving States should establish independent mechanisms to monitor human rights in pre-removal and return processes and after migrants return. States should put in place appropriate administrative and legislative mechanisms to grant legal status to migrants who are unable to return, including those who cannot be removed on grounds relating to the fundamental prohibition of refoulement (A/HRC/37/34/Add.1, principle 20, guideline 5).

79. In some countries, the national human rights mechanisms monitoring returns often lack independence, while the scope of their monitoring activities is limited. Even when they cite international human rights norms, monitoring mechanisms do not systematically operationalize them in their implementation manuals. Effective human rights monitoring should cover not only the conditions and circumstances of the return process but also the situation and individual circumstances of the third country of the migrant after arrival. Independent oversight and human rights monitoring provide information that can be used for reporting in the country of origin and for better formulation of agreements with countries of origin and working instructions supporting persons who have received a deportation order before, during and after the deportation process.[46]

80. Effective monitoring of the practices undertaken by State authorities to detect, arrest and eventually deport undocumented migrants would ensure better protection of the basic rights of migrants.[47] The worrying trend of forced deportation creates an even greater need

[44] "Are returnee migrant workers economically better off?", Institute of Policy Studies of Sri Lanka, Policy Insights, 17 September 2014.

[45] Marianne Haase and Pia Honerath, "Return Migration and Reintegration Policies: A Primer", Integration Strategy Group, December 2016, p. 9.

[46] "Deported: human rights in the context of forced returns" (see footnote 10).

[47] Platform for International Cooperation on Undocumented Migrants, Position Paper on EU Return Directive, April 2015.

for independent bodies to monitor the entire process, thereby assuring greater transparency and accountability with regard to conditions for and the treatment of detainees.[48] The use of monitoring, however, in no way legitimizes forced deportation, which should be avoided whenever possible as an inherently degrading situation involving serious risks to the human rights of the detainee that might amount to torture. Good practices have shown that monitoring not only sheds light on conditions and treatment in detention; the mere presence of an external mechanism in itself has a strong deterrent effect and reduces the risks of torture and ill-treatment. Effective monitoring provides a further safeguard for all individuals, including those with particular protection needs, and can be instrumental in pressing and assisting the authorities to address and improve them. In this context, the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and national preventive mechanisms have, under article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a role to play, since they both have a mandate to monitor the entire deportation process.[49]

81. No one should be returned under a readmission agreement without effective oversight by an independent post-return human rights monitoring mechanism that ensures that the human rights of returnees are actually respected and provides for an accountability mechanism. The presence of embassy staff of the returning country may help upon arrival. For effective, transparent and independent monitoring of the post-return situation of those returned, ensuring participatory verification of well-being, and the reintegration and rights of returnees, national mechanisms should be developed.

82. Prior to any return procedure, migrants should receive adequate information on their rights and on the possibility to report any human rights violation they have endured. The Special Rapporteur notes the legitimate concerns regarding liability for human rights violations or other breaches of international law resulting from the externalization of States' obligations through the actions of international or regional organizations during return procedures, such as IOM and the European Border and Coast Guard Agency (Frontex). In the case of the latter, States delegate the implementation of forced returns to a regional institution, which raises concerns with regard to liability.[50] International responsibility arises, however, for any internationally wrongful act attributable to an international organization that is in breach of an international obligation.[51]

83. States and other stakeholders involved in return procedures should be held accountable for any human rights violations or other breaches of international law. An accountability mechanism should be put in place to ensure that violations of human rights are addressed, irrespective of whether they are committed by States or other stakeholders involved in the return and reintegration process. States should ensure that effective complaint and remedy mechanisms are also in place.

84. Migrants should have access to complaint mechanisms to report misconduct, violence or ill-treatment prior, during and after return. Although an individual complaints mechanism was introduced in European Union Regulation 2016/1624 of the European Parliament and of the Council (art. 72), the regulation is rather ineffective, since it largely relies on the discretionary powers of internal oversight bodies. It lacks a clear definition of what actually constitutes "appropriate follow-up" by Frontex or by States, and the role that a Frontex fundamental rights officer can play in follow-up.[52]

85. Access to justice after return should also be ensured for any human rights violations suffered by labour migrants, who should be certain that claims for unpaid wages, social security benefits or overtime compensation, or for complaints filed against exploitative

[48] "National preventive mechanisms" (see footnote 29).

[49] Ibid.

[50] See Jorrit Rijpma, "The Proposal for a European Border and Coast Guard: evolution or revolution in external border management?", Directorate-General for Internal Policies, European Parliament, 2016.

[51] See *Yearbook of the International Law Commission*, 2011, vol. II, Part Two, arts. 3–4.

[52] Rijpma, "The Proposal for a European Border and Coast Guard" (see footnote 50).

employers are followed up, even beyond their return. Interstate cooperation and formalization through bilateral and multilateral agreements are in that regard essential.

IV. Conclusions and recommendations

86. All migrants are entitled to the protection of their human rights, without discrimination and regardless of their status. Migrants in irregular situations require individual screening and assessment procedures so that their specific situations of vulnerability are effectively identified and the legal protection frameworks that meet their needs, including under international human rights law, may be determined. Failure to provide such procedures constitutes a violation of due process guarantees and the international principles of non-refoulement and the best interests of the child, among others. The protection of the economic, social and cultural rights of migrants, such as access to an adequate standard of living, food, water, health and education, and their civil and political rights, such as access to justice, in countries of origin, transit and destination must be ensured.

87. The return of migrants who do not meet international or national legal standards to remain in their host country should be conducted in safety, with due regard for dignity, humanity and respect for human rights, and in compliance with international law, on the basis of the primacy of voluntary returns; cooperation between States of origin and reception; and enhanced reception and reintegration assistance for those who are returned. Given the potentially dramatic consequences, including rights violations, of forced or coerced returns, priority should be given to independent and voluntary returns at all times.

88. States should facilitate the voluntarily return of migrants — fully informed, free of coercion and with sufficient valid alternatives, such as effective access to temporary permits for work, family unity, study or humanitarian purposes, and opportunities for permanent residency and citizenship — to their countries of origin or citizenship, including through cooperation on consular assistance and issuance of the necessary travel documents. A return cannot be considered voluntary if a migrant decides to return in order to, inter alia, avoid deportation or detention, flee from abusive or exploitative situations in destination or transit countries, or avoid the deprivation of socioeconomic rights in the destination country.

89. Forced returns should always be a measure of last resort, and only follow a fair and efficient process guaranteeing that all legal safeguards have been provided. No return should be implemented without due process of law, in a legal procedure where the migrant is effectively and properly represented and has access to effective remedies. All appeals and remedies, and procedural guarantees, should have a suspensive effect on deportation. Furthermore, no one should be returned without proper oversight by an independent post-return human rights monitoring mechanism.

90. When migrants in an irregular situation are long established in a host country, lack ties to their country of origin or would otherwise face violations of their human rights upon return, alternatives to forced returns, such as regularization, temporary or long-term options for entry and stay, access to citizenship or the facilitation of family reunifications, are preferable. States should offer migrants in need of human rights protection but who do not qualify for refugee status temporary or long-term protection from return.

91. Long-term solutions and safe, regular, accessible and affordable channels, rather than "quick fixes" (such as readmission agreements), are needed so as to ensure the protection of the human rights of migrants. Liability for human rights violations or other breaches of international law resulting from the actions of international or regional organizations during return procedures should be subject to investigation, and such stakeholders should be held accountable.

92. In order to ensure the respect for human rights of migrants in the context of returns, States and other stakeholders should:

(a) **Create well-functioning systems of protection for asylum and other needs and an adequate and appropriate institutional framework for managing large movements of migrants;**

(b) **Ensure that returns are decided on the basis of a procedure that ensures the confidentiality of information and during which the migrant is duly represented, has access to appropriate legal assistance and interpretation services, and has an effective opportunity to explain why a return would not be in respect of his or her rights; appeal procedures should have a suspensive effect;**

(c) **Adopt and support strategies on migrants in vulnerable situations, including by creating mechanisms and allocating resources to ensure that the status of migrants in vulnerable situations can be determined individually, fairly and reliably while respecting the principle of non-refoulement;**

(d) **Children, whether unaccompanied, separated or accompanied by their parents or other caregivers, should be returned only when the return has been determined to be in their best interests through an appropriate procedure before a competent institution that includes the proper representation of the child. Families should never be separated unless separation is necessary to ensure the best interests of the child; children should never be detained on the basis of their or their family's migration status, and alternatives to deprivation of liberty, such as family-based solutions, should be adopted instead;**

(e) **Ensure and facilitate, including as part of any readmission agreement, independent monitoring of pre-removal processes, return, reception and reintegration of migrants in countries of origin to guarantee compliance with international human rights;**

(f) **Ensure that readmission agreements or clauses comply with international law, including the principle of non-refoulement, and guarantee transparency, monitoring, oversight and accountability. All stakeholders, including United Nations agencies, international organizations, non-governmental organizations of all States involved, national human rights institutions and ombudspersons, and migrants themselves, should be consulted prior to any conclusion of a readmission agreement;**

(g) **Provide accessible complaint mechanisms for migrants, including those who have experienced sexual or gender-based violence, and also legal information and aid in a language that they understand to ensure their access to justice and remedies for human rights violations;**

(h) **Provide and publicize accessible complaint mechanisms that migrants may use without fear of retribution; and ensure prompt, impartial and independent investigation of violations of human rights against migrants; and bring States, international and regional organizations and other non-State actors found to be responsible of human rights violations to justice through a fair trial;**

(i) **Ensure that reintegration programmes are provided for migrants who are returned to their countries of origin.**

93. **In order to ensure reintegration that is human rights-centred and effective, States and other stakeholders should:**

(a) **Grant migrants, including irregular and temporary migrants, access to social security benefits on the basis of equal treatment with nationals, and ensure the portability of social security benefits by, inter alia, entering into bilateral, regional or multilateral agreements;**

(b) **Ensure that economic, sociocultural and psychosocial support is provided to returnee migrants and communities in the country of origin prior, during and after the return;**

(c) **Ensure that children are able to obtain a certificate in the country of destination attesting to the level to which they have completed their education;**

(d) **Ensure that victims of trafficking are properly compensated for the harm suffered and are protected from retrafficking;**

(e) **In cases of forced return, conduct human rights risks assessments upon arrival in order to determine and provide the protection and assistance necessary to prevent human rights violations of migrants in returning countries; and decriminalize illegal border crossings and combat stigma and discrimination associated with irregular migration;**

(f) **Promote regular intra- and interregional channels for migration and labour mobility, and ensure that sufficient regular, safe, accessible and affordable channels for migration are available;**

(g) **Refrain from making development aid programmes, visa facilitation and trade liberalization conditional to migration management;**

(h) **Collect and analyse disaggregated data, and conduct research on all aspects of the return of migrants in order to inform effective migration policies that respect the human rights of migrants, including in the context of returns.**

94. **By adopting the 2030 Agenda for Sustainable Development, States made a commitment to facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies (Sustainable Development Goal 10, target 7). Furthermore, the New York Declaration for Refugees and Migrants stressed that States would consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, employment creation, labour mobility at all skills levels, circular migration, family reunification and education-related opportunities. Under these premises, the global compact for safe, orderly and regular migration will mark a fundamental shift in the way that migration is perceived and framed. In particular, States should move from a policy of containment to one that is migrant-centred and ensures that movement, including returns, takes place in full respect of human rights. Migration policies should be developed and implemented in accordance with States' obligations under international human rights law, ensuring that regular, safe, affordable and accessible avenues are available for all migrants.**

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Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on his mission to Nepal from 29 January to 5 February 2018.

During his visit, the Special Rapporteur met with representatives of the Government, the National Human Rights Commission, the diplomatic community, members of the United Nations country team, migrants and their families, and representatives of civil society organizations, trade unions, recruitment agencies, associations of training centres for domestic workers, associations of pre-departure orientation, associations of medical centres and skills training providers.

The main focus of the visit was on labour migration from Nepal, recruitment practices, the assistance provided to Nepalese migrants in destination countries and the return and reintegration of labour migrants. Nepal has made progress in ensuring that the rights of its citizens who migrate for foreign employment are protected. However, important gaps in protection continue to exist in the law and challenges remain in enforcement, implementation and monitoring.

The Special Rapporteur also looked into the situation of migrants in Nepal. He notes the importance of granting them access to the entire human rights framework and the need to revise legislation accordingly.

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Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal from 29 January to 5 February 2018*

Contents

		Page
I.	Introduction	3
II.	General background: migration from Nepal	3
III.	Normative and institutional framework for the protection of the human rights of migrants	4
	A. International legal framework	4
	B. Regional consultative processes	4
	C. National legal and institutional framework	5
IV.	Recruitment process	7
	A. Introduction	7
	B. Role and regulation of recruitment agencies and sub-agents	7
	C. Recruitment fees	8
	D. Pre-departure training and information	9
	E. Consular assistance	9
	F. Return and reintegration	10
	G. Access to an effective remedy	11
	H. Relationship with destination States	12
V.	Migrant women	13
VI.	Migration to India	14
VII.	Irregular migration	14
VIII.	Cross-cutting concerns	15
	A. Migration to Nepal	15
	B. Access to citizenship	16
	C. Internal migration	16
IX.	Conclusions and recommendation	16
	A. Recommendations to the Government of Nepal	17
	B. Recommendations to destination States	20
	C. Recommendations to the private sector	20

* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the human rights of migrants, Felipe González Morales, conducted an official visit to Nepal from 29 January to 5 February 2018 at the invitation of the Government. The main focus of the visit was on labour migration from Nepal, recruitment practices, the assistance provided in destination countries and the return and reintegration of labour migrants. The Special Rapporteur also looked into the situation of migrants in Nepal.

2. During the mission, the Special Rapporteur met with representatives of the Government, including representatives of the Ministry of Foreign Affairs, the Ministry of Labour, Employment and Social Protection, including its Department of Foreign Employment, the Foreign Employment Tribunal and the Foreign Employment Promotion Board, the Ministry for Women, Children and Senior Citizens, the Ministry of Law, Justice and Parliamentary Affairs, the Ministry of Health, the Ministry of Home Affairs and the Human Rights Division of the Nepal Police. He also held meetings with representatives of the National Human Rights Commission, the diplomatic community, members of the United Nations country team, migrants and their families, and representatives of civil society organizations, international non-governmental organizations (NGOs), trade unions, recruitment agencies, associations of training centres for domestic workers, associations of pre-departure orientation centres, associations of medical centres and skills training providers in Kathmandu and Kailali and Morang districts. He also visited the labour village in Kathmandu.

3. The Special Rapporteur expresses his appreciation for the cooperation extended to him by the Government prior to, throughout and after the visit. He also thanks the United Nations country team for their valuable support and assistance.

II. General background: migration from Nepal

4. With an average of 1,500 Nepalese migrant workers officially leaving Nepal every day for foreign employment, international labour migration forms an important part of the lives of Nepalese citizens.[1] Most Nepalese migrant workers may see themselves compelled to migrate for a variety of reasons: extremely difficult economic circumstances, loss of land or employment, debt, the loss of a spouse, family illness, discrimination and a less than favourable socioeconomic status for women, minorities and low-caste or landless people, or in order to guarantee a better future for their children.

5. Most Nepalese migrant workers go to Malaysia, the countries of the Gulf Cooperation Council and India. Over the years, a large recruitment industry has developed in Nepal. A total of 2,723,587 labour permits were issued by the Department of Labour and Employment between 2008/09 and 2014/15[2] and remittances, which are mainly spent on household consumption, loan repayments, asset acquisition, health and education, have become an important source of economic development and poverty reduction in the country, as they make up more than 30 per cent of gross domestic product.[3] Around 71 per cent of the remittances received in Nepal in 2015 came from the countries of the Gulf Cooperation Council.[4]

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[1] See Department of Foreign Employment, monthly reports providing overview of labour permits issued and renewed, available from www.dofe.gov.np/new/pages/details/34 (accessed 6 March 2018).

[2] See Ministry of Labour, Employment and Social Protection, "Labour migration for employment: A status report for Nepal: 2014/2015".

[3] See World Bank, remittances data for 2016, available from https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS.

[4] Asian Development Bank Institute, Organization for Economic Cooperation and Development and International Labour Organization, *Safeguarding the Rights of Asian Migrant Workers from Home to the Workplace* (2017).

6. Recipients of labour permits over the period from 2008/09 to 2014/15 came from every district in the country, with the top 10 being Dhanusa, Jhapa, Mahottari, Morang, Siraha, Nawalparasi, Sunsari, Saptari, Rupandehi and Sarlahi.[5] In Provinces 6 and 7, migrants leave temporarily, seasonally or permanently to go to India. Foreign employment has also created an imbalance in the local economy, so that migrants, mainly from India, go to the Terai belt in the south of the country, to attend to shortages in the labour supply.

7. Women's participation in foreign employment has increased considerably in the past decade. The last census (2011) shows that a total of 1,921,494 persons were registered as absent population, which may include internal migration, and that of them 87.6 per cent were men and 12.4 per cent were women.[6] Only 4.3 per cent of labour permits were issued to women in 2014/15, as bans and restrictions led to increased migration of women to and through India.[7]

8. Nepal has made significant progress in ensuring protection of the rights of its citizens who migrate for foreign employment, including by amending its legislation and developing corresponding policy measures. While the Special Rapporteur recognizes that there is an increased awareness on the part of the State of the need to address these issues in a comprehensive manner, including through enhanced coordination between different ministries, he notes that important gaps in protection continue to exist in law and challenges remain in enforcement, implementation and monitoring.

III. Normative and institutional framework for the protection of the human rights of migrants

A. International legal framework

9. Nepal is a party to all the core human rights treaties except the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. Nepal has ratified seven out of the eight International Labour Organization (ILO) fundamental conventions. However, it has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Migration for Employment Convention (revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Private Employment Agencies Convention, 1997 (No. 181) or the Domestic Workers Convention, 2011 (No. 189).

11. Nepal has not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, or the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime; neither has it ratified the Convention relating to the Status of Refugees and its 1967 Protocol, the Convention relating to the Status of Stateless Persons or the Convention on the Reduction of Statelessness.

B. Regional consultative processes

12. Nepal is a member of the Colombo Process, a regional consultative process on the management of overseas employment and contractual labour for countries of origin in Asia. It is also a member of the Abu Dhabi Dialogue. The secretariat of the South Asian

[5] See Ministry of Labour and Employment, "Labour migration for employment. A status report for Nepal: 2014/2015".

[6] See Government of Nepal, *National Population and Housing Census 2011*.

[7] See Ministry of Labour and Employment, "Labour migration for employment".

Association for Regional Cooperation, of which Nepal is a member, was set up in Kathmandu on 17 January 1987.

13. The Special Rapporteur notes the increased engagement of Nepal in international forums, including its role as Chair of the Colombo Process, where it made relevant contributions to the negotiations on the global compact for safe, orderly and regular migration promoting, inter alia, ethical recruitment practices, access to information and remittance cost reductions. He encourages Nepal to continue engaging in the negotiations on the global compact, the Colombo Process, the Abu Dhabi Dialogue and the South Asian Association for Regional Cooperation, supporting the transition to an ethical recruitment system. He notes that its enhanced engagement in regional cooperation with other Asian migrant-sending countries would allow a common agenda to be developed, which should include minimum standards for labour migrants and labour conditions, a collective ban on recruitment fees, the adoption of a standard contract and social protection and insurance provisions, to ensure that concerns about international competitiveness do not impact the transition to an ethical recruitment system.

C. National legal and institutional framework

1. National legislation and policies

14. The 2015 Constitution of Nepal contains two mentions of foreign employment in the section on policies regarding labour and employment under part 4 "Directive Principles, Policies and Obligations of the State", where it refers to the management and regulation of foreign employment in order to make it safe from exploitation, free and well-managed to guarantee labourers' rights and employment and refers to the use of the capital, skills, technology and experience gained in foreign employment in the productive sectors of the country. Article 29 of the Constitution also makes reference to exploitation, including forced labour, trafficking, slavery or servitude.

15. The Civil Code (1963) is a combination of a civil and penal code. The recently adopted Criminal Code (2017) and Criminal Procedure Code (2017), which will come into effect in August 2018, include a much wider range of offences.

16. The principal law pertaining to labour migration is the Foreign Employment Act of 2007, supported by the foreign employment rules of 2008. The act is going to be amended. It sets out provisions to regulate labour migration, including through identifying the functions and provisions of various government agencies and private parties. It defines the administrative requirements for recruitment agencies and sets out provisions for an oversight and monitoring system by defining the requirements for licensing recruitment agencies. It provides for a complaints mechanism (sec. 35) and defines the circumstances for the revocation of a licence (sec. 13), crimes under the Foreign Employment Act and the punishments that can be imposed (ch. 9). It further gives the Government the authority to specify the upper limit of the amount an institution can collect from each worker, including a service fee and promotional costs (sec. 24). The Act also includes provisions aimed at better protection of the rights of migrants, including by protecting potential migrant workers from confiscation of their personal documents (sec. 18); from delayed departure; from deception regarding their contracts (secs. 15, 19 and 20); from deception over the jobs in question (sec. 36); against abuse at the hands of an unlicensed agent or agency (secs. 43 and 44); from overcharging for visas, service fees etc. (sec. 53); from lower remuneration or different tasks than those stipulated in the contract (sec. 55); by setting out the right to a contract in Nepali (sec. 25); by granting the right to insurance provided through the recruitment agency (sec. 26); and by granting the right to information through a mandatory pre-departure orientation session (sec. 27). Under the Act, the government is also required to set up a labour desk at the international airport and other places, as necessary (sec. 73) and the deployment of labour attachés to countries where 5,000 or more workers have been sent for foreign employment is defined (sec. 68). In addition, under the foreign employment rules of 2008, the appointment of a women labour attaché in destination countries where 1,000 or more Nepalese migrant women are employed is required.

17. Nepal also passed a Human Trafficking and Transportation (Control) Act in 2007, supported by regulations in 2008. Human trafficking is defined as the act of selling or purchasing a person for any purpose, using someone for the purpose of prostitution, or for the purpose of unlawfully extracting a human organ (sec. 4 (1)). The act of transportation is defined as taking a person out of the country for the purpose of buying and selling (sec. 4 (2) (a)), taking someone from their place or residence, or from the custody of another person, through enticement, inducement, deception, forgery, coercion, abduction or threats, exerting influence and abuse of power, including through threats or coercion of the guardian or custodian of the victim, or take to any place within Nepal or abroad or hand him or her over to somebody else for the purpose of prostitution and exploitation (sec. 4 (2) (b)).

18. The Immigration Act of 1992 and the relevant 1994 rules lay out provisions to regulate and control the entry into, stay in and departure from Nepal of foreign nationals. The Nepal Citizenship Act of 2006 sets out the provisions for acquiring Nepalese citizenship.

19. The Trade Union Act of 1999 amending the Act of 1992 defines requirements for the formation and membership of trade unions and associations. The Labour Act of 2017, replacing the Act of 1992, defines the rights, interests, facilities and safety of workers. The Child Labour (Prohibition and Regulation) Act 2000 prohibits child labour and contains provisions for legal action against those exploiting children.

2. National institutions

20. The provisions in the national legislation and regulations also require the establishment of specific institutions responsible for labour migration. Functioning under the Ministry of Labour, Employment and Social Protection, responsible for policy formulation and planning, they include the Department of Foreign Employment, the Foreign Employment Promotion Board and its welfare fund and the Foreign Employment Tribunal.

21. The creation of the Department of Foreign Employment is an indication of the priority given to labour migration in Nepal. It is responsible for administering and regulating the recruitment industry and for investigating complaints. The Foreign Employment Act established the Foreign Employment Tribunal, which according to international standards, is a semi-judicial body.

22. The Foreign Employment Promotion Board aims to make foreign employment safe, systematic and respectable, and protects the rights and welfare of workers and foreign employment entrepreneurs. The Board has been given the responsibility of determining the curriculum and standards of the mandatory pre-departure orientation programme. Any institution that wants to provide such programmes must apply to the Department of Foreign Employment for a licence.

23. The Foreign Employment Act also provides for the establishment of a foreign employment welfare fund under the Foreign Employment Promotion Board, in order to provide for social security and ensure the welfare of migrant workers and their families.

24. The Foreign Employment Act and its 2008 rules are completed by the 2012 foreign employment policy, whose goal is to make foreign employment safe, organized, respectable and reliable and utilize economic and non-economic benefits to alleviate poverty and maximize the contributions of foreign employment to the country's sustainable economic and social development. At the same time it seeks to overcome the shortcomings of the Act and rules, including by incorporating various provisions of international standards. The Government launched a detailed national strategic action plan for the period 2015–2020, through which it sought to translate the objectives, aims and policy pillars of its foreign employment policy into reality.

25. The National Human Rights Commission was established in 2000. The 2007 Interim Constitution of Nepal made the Commission a constitutional body and the 2015 Constitution retained that provision. The National Human Rights Commission Act was enacted by the Constituent Assembly in 2012 and defines the functions, duties and powers

of the Commission, which has been accredited with A status. It has undertaken important work in relation to the human rights of migrants and the Special Rapporteur urges the Commission to continue to expand its activities.

26. He further commends the Commission for signing a memorandum of understanding with the National Human Rights Committee in Qatar and the National Human Rights Commission of Korea (Republic of Korea), with particular provisions aimed at improving the human rights situation of migrants. He encourages the Commission to continue to monitor and evaluate the implementation of bilateral agreements concluded between Nepal and the various destination countries. He also encourages cooperation between national human rights institutions regarding access to remedies, as defined in the 2008 Seoul Guidelines on the cooperation of national human rights institutions for the promotion and protection of human rights of migrants in Asia.

IV. Recruitment process

A. Introduction

27. The Department of Foreign Employment is the major entity in charge of issuing the labour permits required for Nepalese migrant workers, including registering, licensing and monitoring private institutions that provide services relating to labour migration. As set out in the Foreign Employment Act and the 2008 rules, licensed recruitment agencies are authorized to receive letters from foreign employers looking for migrant workers, recruit and select migrant labourers and send labourers to the countries that the Government has approved for labour migration.

28. The Department will issue a labour permit to a migrant upon presentation of a complete file, which must include the mandatory orientation training certificate and skills orientation training certificate, if needed, a health certificate, an insurance certificate, the contract between the worker and the recruitment agency, the contract between employer and worker, and a receipt for payment of service fees to the recruitment agency. In addition, the labour desk set up at Kathmandu airport will certify that migrant workers leaving for foreign employment have followed the provisions laid out in the Foreign Employment Act. According to the act, licensed agencies are required to send migrant workers leaving for foreign employment through the national airport in Kathmandu.

29. About 80 per cent of migrants leaving for countries other than India use recruitment agencies.[8] Owing to the highly centralized recruitment system, the majority of potential migrants rely on informal labour recruiters for job placements. The risks involved include bogus recruitment agencies, potential migrants being overcharged and using moneylenders, who give loans to migrants at high interest rates.

30. The practice of charging fees to migrant workers for recruitment services renders them more vulnerable to human trafficking and forced labour. Deceptive and coercive recruitment practices increase the vulnerability of migrant workers, as they pay recruitment fees up front. As a result, they are less likely to report violations of the Foreign Employment Act, abuse or exploitation. In many cases, the situation of migrant workers amounts to debt bondage, forced labour or human trafficking.

B. Role and regulation of recruitment agencies and sub-agents

31. The Special Rapporteur observed a very complex recruitment system, with a large number of actors operating in it. The government of Nepal has licensed more than 1,000 private recruitment agencies, which operate at the central level, with only 47 branch offices

[8] See Ministry of Labour and Employment, "Labour migration for employment".

located in the districts and around 700 licensed local sub-agents operating at the district level, which is insufficient to meet demand at the local level.[9]

32. In the absence of a decentralized recruitment system, unlicensed sub-agents get involved in assisting migrants in job placements and the relevant processes, including obtaining visas, the necessary administrative approvals, medical clearances and insurance. The Special Rapporteur heard accounts of potential migrant workers dealing with seven different licensed and informal agents throughout the recruitment process, leading to repeated payment of high fees for unclear purposes.

33. He urges the Government to develop legislation regulating the relationship between recruitment agencies and their agents, their sub-agents or other forms of subcontractors, to establish clear responsibilities and liability in the recruitment chain. Further, he invites the Government to facilitate the opening of additional branch agencies at the district level, to increase the accessibility to licensed recruitment agencies for potential migrant workers.

34. In terms of monitoring, he observes with concern that the same Department that registers and licenses private institutions is tasked with monitoring those institutions. He encourages the Nepalese authorities, as a matter of priority, to establish an independent monitoring mechanism, equipped with the necessary resources to effectively identify abuse and exploitation, including through a system based on complaints from trade unions, the National Human Rights Commission and civil society organizations. That mechanism also needs to ensure better monitoring of labour recruitment chains at district level.

35. He further encourages the Government to ensure that recruiters are effectively licensed. Abuse and exploitation by recruiters need to be investigated and their licences withdrawn if there are violations of legislation. Recruitment agencies should also be monitored in regard to handing out receipts for all payments made by migrants. Inspections of recruitment agencies should take place on a regular basis in that regard.

C. Recruitment fees

36. The Special Rapporteur recognizes that recruiters facilitate regular opportunities, whereby migrants arrive in countries with a legitimate visa. However, he notes that the sector is in practice very poorly regulated. He heard of accounts from migrants of sometimes paying up to Nrs 180,000 (approximatively $1,750) in recruitment fees.

37. In 2015, the Government introduced a model whereby ticket and visa costs are born by the employer and which limits the legally permitted service fee charges to Nrs 10,000 (equivalent to $96) for placement in the seven major destination countries.

38. During his mission, the Special Rapporteur observed that this policy is poorly enforced and no effective monitoring mechanism to address non-compliance is in place. He wishes to draw particular attention to the fact that the policy does not completely eliminate recruitment fees and still allows for some fees to be charged to potential migrant workers for pre-departure services. Legislation to limit the fees improperly legitimizes the concept of charging migrants for their recruitment and creates unnecessary confusion. Recruitment fees are a business-to-business charge and should be banned completely.

39. He observed that potential migrant workers often cannot pay the costs related to their recruitment, as these have to be settled up front. If bank loans are refused, potential migrants may have to sell their land, pawn their jewellery, borrow from friends or relatives, or turn to informal money lenders who charge them high interest rates, sometimes up to 35 per cent. The Special Rapporteur was also informed of situations where agents deducted debt payments directly from the salaries of migrant workers, which ultimately left them with little or no savings when they returned to Nepal.

40. Mandatory pre-departure medical examinations, insurance and the cost of travel to Kathmandu to attend pre-departure training may add to already high recruitment fees.

[9] Ibid.

Private actors are involved in providing these services and the Special Rapporteur notes that potential migrants are often overcharged. He notes the need for better regulation and recommends institutionalizing the system in close collaboration with the countries of destination, for instance by ensuring medical certificates are issued by public hospitals.

41. Recruitment fees and the commonly resulting debt increase the precariousness of migrants' situations and may lead to situations of debt bondage, forced labour and trafficking. The Special Rapporteur urges the authorities as a matter of priority to monitor recruitment agencies more effectively and enforce penalties against those that violate provisions in the legislation, to ensure better protection of migrant workers from situations of debt bondage, forced labour and trafficking.

D. Pre-departure training and information

42. The Government has made progress in enhancing access to information for potential migrants, introducing a mandatory two-day pre-departure orientation course. The Special Rapporteur also recognizes the efforts made by the Government to collaborate with United Nations agencies, international organizations, international donor agencies and NGOs to improve access to information, justice and skills development training, and provide assistance to returnees and the families left behind. In that regard, he welcomes the establishment of migrant resource centres, some of them set up in District Office premises.

43. The Special Rapporteur observes that the mandatory pre-departure training is only available in the capital and a few selected districts, which involves further costs for those taking part. Furthermore, the Special Rapporteur was informed that the content is limited to general information. He observes that they could be enhanced, both in length and content and suggests they include information on migrants' rights and redress mechanisms, on consular assistance and on health and self-care.

44. The Special Rapporteur commends the Government for introducing the 2012 technical and vocational education and training policy, in which it recognized the need for skills-development training programmes. At the same time, the Special Rapporteur received complaints that the skills training was inadequate and that migrant women especially would benefit from enhanced skills training. He was informed that domestic workers were often not familiar with modern domestic appliances and many migrant workers lacked basic language skills. The provision of skills training would render domestic workers less vulnerable to abuse in private households.

45. The Special Rapporteur considers the adoption of the Local Government Operation Act to be a positive step. It obliges local government to provide basic foreign employment services, such as the collection of data, provision of information, provision of skills and financial literacy training and the reintegration of returnees. He encourages the Foreign Employment Promotion Board to work in close collaboration and coordination with local authorities in establishing foreign employment services by setting standards, providing guidance and ensuring cost-sharing.

46. Overall, the Special Rapporteur observed that vocational skills, adequate orientation programmes for employment and awareness of the migration process needed to be improved, in order to ensure that migration decisions are well-informed and that migrants know their rights and how to seek help or lodge a complaint.

E. Consular assistance

47. The Special Rapporteur welcomes the appointment of labour attachés and counsellors in nine Nepalese diplomatic missions. That is an important step for the protection of migrants, as international law recognizes their right to seek consular assistance, the exercise of which must be allowed without any obstacles by destination countries.

48. The Special Rapporteur heard accounts of various violations of the Foreign Employment Act, which rendered migrant workers more vulnerable to exploitation and

abuse in the destination country. For instance, terms of employment, remuneration, employing company or the type of work agreed upon in Nepal were changed upon arrival in the destination country; contracts were substituted; the contract was not translated into a language migrant workers understood and they were not given a copy of the contract; migrant workers, including migrant children, were sent on forged or fake documents; or workers faced non-payment of or deductions in wages. The Special Rapporteur also heard testimonies of migrants who had not received information on how to complain if the contract was not respected. Many lived in overcrowded or substandard conditions and were forced to remain with their employers despite being abused.

49. The Special Rapporteur received accounts that the labour attachés were often not properly trained in labour and human rights and were unaware of the situation of migrants in distress or unwilling to assist and protect them and facilitate their repatriation. In that regard, Nepal needs to strengthen its welfare services and the consular assistance provided to Nepalese migrants, regardless of migratory status. Labour attachés and ambassadors to countries with a significant Nepalese migrant population should not have ties to recruitment agencies, as it makes their willingness to support migrants questionable.

50. He was informed through the authorities that the Foreign Employment Promotion Board makes free legal assistance through the embassies in destination countries available. However, he heard that the embassies often do not provide adequate information and support services to workers who have grievances against their employers and that as a result migrant workers prefer to return to Nepal. He encourages the Board to use its funds not only to facilitate exit permits or assist migrants implicated in criminal cases or being held in detention, but to ensure that migrants, including irregular migrants, can seek redress through the courts in the destination country, with the embassies providing a roster of competent local lawyers.

51. The Special Rapporteur was informed about the worryingly high number of deaths and injuries of migrant workers. In the fiscal years 2008/09–2014/15, a total of 4,211 migrants passed away in Malaysia and the countries of the Gulf Cooperation Council, with cardiac arrests, natural deaths and traffic accidents seemingly the main reasons for death among men, and suicide, natural deaths, traffic accidents and heart attacks being the main reasons for death among women.[10] He observes that among the male population, cardiac arrests and natural deaths are disproportionately high for a population of which 68 per cent are aged between 18 and 36, and he encourages the Government to conduct and validate post mortem examinations on a regular basis. He further encourages Nepalese embassies to ensure that ILO occupational health and safety standard provisions in destination countries are enforced in migrants' workplaces and in their accommodation. Those provisions should be included in all memorandums of understanding and bilateral agreements concluded with destination countries.

52. The Special Rapporteur observes that exploitation and violence, including sexual abuse of women at the hands of their employers, seems to be quite systematic. He notes that in four destination countries, shelters have been set up in embassy premises. Many interlocutors described how they felt so desperate that suicide seemed the only solution to them. The Special Rapporteur observes that support to migrant women, including through having women officers to deal with cases of sexual abuse, the provision of a local 24/7 hotline free of charge and assistance with changing the workplace, seeking redress or facilitating return, needs to be enhanced as a matter of priority.

53. He also notes the need to enhance cooperation with destination States to ensure that the rights of the Nepalese are respected during the whole migration process. The Government of Nepal, in cooperation with the destination country, must ensure that Nepalese migrants' rights in destination countries meet international standards with respect to facilities at work, access to justice, freedom of mobility and access to health, sanitation and freedom of association. The Special Rapporteur encourages the authorities, and especially labour attachés and consular services, to collect better data in terms of the

[10] See Ministry of Labour and Employment, "Labour migration for employment".

complaints received, so that proper policy measures can be taken by the Nepalese authorities.

F. Return and reintegration

54. The Special Rapporteur welcomes the establishment of the welfare fund, providing compensation for those who have sustained injuries or an illness that resulted in disability and/or loss of job and for the deaths of migrant workers. It also provides for the "rescue and repatriation" of migrants. He also welcomes the increase in the welfare schemes from Nrs 300,000 ($3,000) to Nrs 700,000 ($7,000).

55. When they return to Nepal, migrants often face the same social and economic challenges that pushed them to migrate in the first place, which ultimately leads to remigration. Women find this particularly challenging, as they face additional social stigma because of their migration.

56. Women who are pregnant because of rape are not able to return to their families, husbands and children, because of the social stigma, which leads to very complicated personal situations and family breakdowns. The Special Rapporteur observes that these are not anecdotal cases but are part of the reality of many migrant women. He welcomes information about the existence of rehabilitation centres for migrant women in 10 districts. He notes the need to increase their number and that psychosocial counselling should be part of the basic services made available in the shelters.

57. The Special Rapporteur was informed that rehabilitation for victims of trafficking and forced labour was often available only in relation to trafficking for sexual exploitation. In addition, reintegration is a major challenge because of the social stigma attached to trafficked victims.

58. The Special Rapporteur strongly encourages the authorities to develop and strengthen migration policies which meet the needs of returnees, facilitate their reintegration into the labour market and recognize their experience and the skills they have acquired abroad.

59. The "safer migration" project is a step in the right direction. Operating in 20 districts under the auspices of the Ministry of Labour, Employment and Social Protection, its migrant resource centres provide skills training, awareness programmes for foreign employment and financial literacy programmes for departing and returning migrants. It also offers psychosocial counselling, access to justice and financial support to start small businesses, and skills development activities for returnees. The Special Rapporteur notes the important work done by civil society organizations and district development offices in implementing such projects.

60. He further welcomes the implementation of a project developed by the Ministry of Industry, Commerce and Supplies, which seeks to link returned migrants to microfinance institutions for the establishment of small businesses. Investing in sustainable returns, including by supporting business initiatives and using the experiences of Nepalese who have migrated, should be a key priority for the Government. Labour migration has the potential to support sustainable development through upskilling of workers who are able to make additional contributions upon their return.

G. Access to an effective remedy

61. According to the accounts the Special Rapporteur heard, many migrants face serious barriers to accessing remedies when they are exploited and abused during or as a result of the recruitment process.

62. Although the offences under the Foreign Employment Act are criminal offences, the Complaints Registration and Investigation Section in the Department of Foreign Employment has the jurisdiction to investigate with the same powers as the police. According to the act, the Department has jurisdiction over administrative issues, but can

also investigate cases of fraud, the charging of excessive recruitment fees and deception in regard to contracts. It has the jurisdiction to decide if an offence has occurred and can impose penalties, including compensation to workers, the imposition of fines, revoking of licences, or imprisonment. However, the Special Rapporteur was informed that there was a serious backlog of up to 8,500 cases.

63. The Foreign Employment Tribunal is mandated to adjudicate cases which the Department is not specifically authorized to deal with or that are referred to it by the Department. The Special Rapporteur notes the efficient rate of case settlement of the Tribunal: since 2010, of a total of 1,424 cases, 1,079 have been settled. Penalties may include compensation to migrants, fines and imprisonment.

64. The Special Rapporteur is deeply concerned at the limited police involvement in investigating cases of deceptive recruitment and forced labour, as it severely limits migrant workers' access to justice. He notes that the Department of Foreign Employment should not retain the judicial rights to ensure access to justice through the competent courts. In that regard, the Rapporteur urges the Government to repeal existing legislation, limiting the adjudicating rights of the Department to administrative matters and determining by law the type of cases in which migrants have to be referred to the Foreign Employment Tribunal and those in which they must be referred to the formal criminal justice system.

65. Despite their gravity, most disputes are settled through informal dispute resolution at the Department of Foreign Employment and not under the civil code or the criminal legislation on trafficking. As a result, they are rarely referred to the district courts.

66. The Special Rapporteur further notes that because of the lack of conceptual clarity, victims' complaints related to the trafficking of women and girls for the purpose of sexual exploitation were almost the only cases to be investigated and tried under the criminal justice system, whereas complaints from victims involving trafficking for labour exploitation, debt bondage or forced labour were referred to the Department. He urges the Government to ensure that all cases involving trafficking, debt bondage and forced labour are properly investigated and tried under the criminal justice system. Criminal investigations could effectively deter unscrupulous recruiters from exploiting migrant workers and compensation should be paid to victims.

67. To enhance understanding of such crimes, capacity-building, including at the local level and with district judges and police, needs to be undertaken. The Special Rapporteur urges the Government to determine by law the types of cases in which migrants have to be referred to the formal judicial system. Strengthening the role of the judiciary helps to build respect generally for the rule of law in relation to labour recruitment.

68. The centralized location of the institutions dealing with violations of provisions in the Foreign Employment Act, such as the Department and the Tribunal, is an additional barrier for victims wishing to lodge a complaint, as they lack the funds for travel to and accommodation in Kathmandu.

69. Appeals against a decision taken by the Department of Foreign Employment have to be lodged with the Ministry of Labour, Employment and Social Protection within a very short time period of 35 days of the date of the decision. The Special Rapporteur urges the Government to ensure that appeals reach a court of second instance, such as is the case for appeals against a decision by the Foreign Employment Tribunal. Despite the possibility to appeal, he was informed that only a limited number of migrants make use of this provision, as they cannot afford to go through a lengthy process and use the compensation received to settle debts incurred in the recruitment process.

H. Relationship with destination States

70. Although Nepal and other countries of origin have a role in preventing the abuse of their own nationals who migrate for work, the destination States are responsible for human rights violations committed against migrants on their territory. The Special Rapporteur heard many reports of abuse in destination States, including horrible stories of ill-treatment, such as migrants being killed or women being raped by their employers. Low-skilled

migrants, in particular, are subject to high levels of human rights violations in many countries, including harassment, abuse and labour rights violations. The Special Rapporteur therefore notes the need to enhance cooperation with destination States to ensure that the rights of Nepalese citizens are respected during the whole migration process.

71. The Government of Nepal has utilized bilateral instruments in the form of labour agreements and memorandums of understanding to protect its citizens in destination countries. Although it has allowed Nepalese migrants to work in 109 foreign countries, bilateral labour agreement or memorandums of understanding have been signed only with Bahrain, Japan, Jordan, Qatar, the Republic of Korea and the United Arab Emirates, while a pilot bilateral agreement has been signed with Israel.

72. Many interlocutors have praised the Government-to-Government agreement with the Republic of Korea, which was often referred to as a model example, as it facilitates migrant worker recruitment without the services of recruitment agencies and commits to providing additional skills during employment or before return. However, high recruitment costs continue to be charged to migrant workers.

73. The recently signed bilateral agreement with Jordan (2017), which provides for a standard contract for domestic workers, stipulates the number of holidays and paid sick days, and defines the minimum wage.

74. The Special Rapporteur urges Nepal to pursue the conclusion of similar agreements. They should include a uniform model contract for all workers, including domestic workers, and should ensure respect for and protection of their human rights. Labour contracts based on such a model should specify the job description, wages and labour conditions. Memorandums of understanding or bilateral agreements should be formulated in a transparent manner, with all key stakeholders involved and should be accessible to the public. In the meantime, the Nepalese authorities should cooperate closely with destination States, ensuring that the contract which is signed in Nepal is shared with the destination State for quick electronic registration, in order to prevent contract substitution.

75. The Government of Nepal, in collaboration with destination countries, should facilitate the legal remittance of earnings to benefit migrants and their families, and discourage the informal transfer of earnings.

76. The Special Rapporteur notes that initiatives from trade unions to collaborate with them should be enhanced. Such initiatives are significant, as they may increase the protection of and assistance to Nepalese migrants in destination countries.

V. Migrant women

77. In 2015, the Government of Nepal endorsed guidelines regarding Nepalese domestic migrant workers. The guidelines require women migrants to have reached the age of 24 and prohibit women with a child below the age of 2 from taking up domestic work in foreign employment. They also include a provision for the Government to sign bilateral agreements and memorandums of understanding with destination countries to which Nepalese migrants go for domestic work. In early 2017, the parliamentary International Relations and Labour Committee instructed the Government to temporarily stop Nepalese female migrants from going to the countries of the Gulf Cooperation Council for domestic work, as a result of their visit to those countries and observation of the conditions they saw there.

78. The Special Rapporteur observed a lot of stigma around the migration of women, loosely associated with prostitution or trafficking for sex work. As women are often employed in private households, operating outside the formal economy and excluded from labour law protection, he observes that they are left in an extremely precarious situation, heavily dependent upon their employer and without any formal protection mechanism. However, the solution to the problems faced by domestic workers cannot be to discriminate against them through the imposition of bans or other means of violating their right to leave the country.

79. Such provisions only drive migration further underground and a considerable number of Nepalese women use irregular channels through India, often at the hands of unscrupulous recruiters. Others leave through official channels and with a different job description, but find themselves employed as domestic workers in the destination country. The Special Rapporteur heard multiple accounts of women who did not end up with the jobs they had agreed to, had been brought to countries different than the ones they were promised, and sometimes ended up in trafficking rings in third countries.

80. Nepalese women migrant workers need better protection from the Government. The Special Rapporteur strongly urges the Nepalese authorities to develop a human rights-based, holistic and comprehensive policy, aimed at better protection of women migrant workers in destination countries, which should be elaborated through close consultation with all relevant stakeholders, including the relevant ministries, civil society organizations, the National Human Rights Commission and women migrant workers themselves. Assistance from international NGOs and United Nations agencies would be relevant in this regard. The Special Rapporteur further urges the Nepalese authorities to ensure better protection of female domestic workers abroad and to include such provisions in any bilateral agreements or memorandums of understanding concluded with destination States. The Special Rapporteur further believes that Nepal would find it easier to negotiate the legal protection of Nepalese domestic workers abroad if it included domestic work in national labour laws, in line with ILO Convention No. 189.

VI. Migration to India

81. India remains a major destination country for Nepalese workers, with around 37 per cent of Nepalese migrants.[11] Since migrants are not required to have any official documents to enter and work in India, they are not considered migrants by the Government of Nepal, which is inconsistent with the concept of migration according to international law. While there is only limited data available as to how many Nepalese migrant workers cross the border into India or Indian workers into Nepal, it is estimated that India is the country with the highest number of Nepalese migrants, who leave temporarily or seasonally, or settle there permanently. Men are typically employed as security guards, hotel staff or in the construction sector, while women are engaged in domestic work. Most of them come from Provinces 6 and 7.

82. The Special Rapporteur was also informed that in the Terai belt, there is a sizeable migration to Nepal from India. However, no official records exist on the Nepalese side.

83. The Special Rapporteur was made aware of cases of exploitation, abuse and even deaths of Nepalese migrants at the hands of employers in India. The migrants concerned or their family members were either not aware of any complaints procedure, were afraid of reprisals if they lodged a complaint, or did not think their claim would be successful. In the absence of an agreement defining the rights, needs and interests of migrants, they have very few or no means of seeking redress for violations suffered in India.

84. The Special Rapporteur is further concerned over accounts of migrant children leaving from Nepal to work in India as labour migrants and accounts of the trafficking for sexual exploitation of women and girls. The Special Rapporteur notes the positive development of the deployment of a police liaison officer in India. He also notes the need to increase the number of women police officers at local police stations and at the main border crossings and encourages enhanced training for identification of potential victims of trafficking.

85. The Special Rapporteur encourages the Nepalese authorities to ensure better protection for Nepalese citizens, including by collecting data on the types of violations and abuse incurred, developing relevant policies and opening consulates in those Indian cities where there are significant numbers of Nepalese migrants. That would ensure a communication system for rescuing stranded migrants and repatriating migrant victims of

[11] See Government of Nepal, *National Population and Housing Census 2011*.

trafficking and forced labour. The Government should also ensure that remittances can be transferred through financial institutions.

VII. Irregular migration

86. Despite legislation that prohibits the departure of migrant workers for foreign employment via another country, the Special Rapporteur collected testimonies about large number of Nepalese migrant workers, particularly women, departing via India in order to evade government regulations and the lengthy and expensive recruitment process. They may become victims of unscrupulous agents and recruitment agencies and may find themselves in situations where they are forced to leave on forged or fake documents, or without the necessary papers.

87. Others, who leave on a labour permit, may become irregular if they overstay their visa, travel on a different visa and engage in work in the destination country, are not picked up by the company at the airport, are trafficked to another country than the one for which their labour permit and visa have been issued, or have run away from abusive and exploitative employers. Some renew their contracts in the destination country, which means they lack a valid labour permit from the Nepalese authorities. That irregularity makes them even more vulnerable to abusive treatment. Because of their status, the Nepalese authorities provide only limited support to them.

88. The Government of Nepal must protect and assist irregular Nepalese migrant workers in destination countries and facilitate their return to Nepal, regardless of their migratory status. The focus should be on monitoring recruitment agencies and punishment should be directed at them, rather than at migrants for their irregular status.

89. The Special Rapporteur was informed that irregular migrants find it difficult to access provisions in the Foreign Employment Welfare Fund, which can facilitate the return of injured or sick migrants or compensate their families in case of death. Migrants who have overstayed their visa receive only Nrs 10,000 (about $96), instead of the Nrs 700,000 (about $6,700), which is available to migrants in a regular situation. The renewal of labour permits should thus be facilitated at Nepalese embassies.

90. According to information from the Foreign Employment Promotion Board, the fund has accumulated Nrs 4 billion (about $38 million). The Special Rapporteur notes that of that amount, only Nrs 1 billion (about $9.5 million) is spent annually. He encourages the authorities to ensure that the fund can contribute to compensation for irregular migrants who have sustained injuries or an illness that has resulted in disability and/or loss of a job or death, or who need repatriating for some other reason.

VIII. Cross-cutting concerns

A. Migration to Nepal

91. While the main focus of his visit was labour migration from Nepal, the Special Rapporteur also looked into issues concerning migration to Nepal and notes that Nepal has historically hosted a large number of refugees, mainly from the Tibetan Autonomous Region in China and from Bhutan. The Special Rapporteur regrets that the 2015 Constitution and the Civil Act (2012) guarantee certain rights, including protection against discrimination, freedom of speech, the right of peaceful assembly, freedom of association and freedom to form and join a trade union, freedom to move and reside in any part of Nepal, and the freedom to practice any profession, only to citizens, in violation of guarantees under key international human rights law. The Special Rapporteur wishes to remind the Government of Nepal that according to international standards and that, with the exception of the right to vote and be elected and the right to enter and stay, migrants, regardless of their status, benefit from the entire human rights framework.

92. The Special Rapporteur was informed that identity documents have not been issued or renewed to Tibetan refugees since 1995, which places the majority of them at risk of financial penalties under the 1994 immigration rules for irregular entry or presence in the State party, detention, deportation or refoulement. The Special Rapporteur encourages the Government to undertake a comprehensive registration exercise of long-staying Tibetans to protect them from statelessness and which guarantees their right to live, work and study in Nepal, and allows them to travel outside Nepal.

93. The Special Rapporteur was assured that of the 111,000 Bhutanese refugees, the majority had been resettled in third countries. In the course of his visit however, he was made aware that 8,500 Bhutanese were still residing in Nepal, with no permanent resolution of their status. He encourages the Government to ensure that their stay can be regularized, either through the provision of refugee documentation or citizenship, in order to protect them from statelessness and guarantee access to all their civil, political, economic, social and cultural rights.

B. Access to citizenship

94. While the Special Rapporteur notes that citizenship certificates are the primary document that gives individuals a legal identity in Nepal, he received information that more than 4 million people in Nepal are at present without citizenship certificates. He notes that citizenship identification is instrumental for day-to-day life: for instance, to apply for a passport, open a bank account, vote, access higher education and government welfare schemes, or simply to buy a SIM card for a mobile telephone. In particular, women, children born out of wedlock, or children of a refugee or naturalized parent, are deprived of part of their rights owing to a lack of citizenship certificates, as a result of limited provisions in previous legislation.

95. The Special Rapporteur notes that restrictions for women in conferring citizenship on their children independently and in the same capacity as men are set out in the new Constitution (see article 11 (5), 11 (6) and 11 (7)). He is concerned that according to these provisions, Nepalese women can only transfer citizenship by descent if the father cannot be traced. If the father is a foreigner, the child can only gain citizenship through naturalization. He notes that these provisions are particularly challenging if the husband has migrated abroad or if the child was born abroad.

96. Despite several Supreme Court decisions affirming gender equality in access to citizenship, the Special Rapporteur was informed that in practice and particularly in areas outside Kathmandu, laws continued to be implemented in a discriminatory manner, particularly against women belonging to a minority. The Special Rapporteur calls on the Government to ensure men and women have equal rights to citizenship, including the right to transfer citizenship to their children. People denied citizenship are at risk of statelessness, which denies them the protection of the State and puts them at heightened risk of violence, poverty, exploitation and other serious human rights violations.

C. Internal migration

97. Owing to poverty and the lack of economic opportunities and because of climate change, a considerable proportion of the population of Nepal moves seasonally or permanently within Nepal. Most internal migrants move from the hills to the southern plains and from rural areas to urban centres.

98. The Special Rapporteur heard of bonded labour, forced labour and the trafficking of internal migrants, including children, in the agricultural, domestic, construction, service and manufacturing sectors. He was informed that several hundred children worked in the brick kiln industry. He encourages the Government to develop policies for early identification of victims, referral mechanisms, protection and assistance to persons trafficked for labour exploitation, and to increase counselling and awareness programmes. He further encourages the Government to consider internal migration for the next census or demographic survey, in order to develop policies which meet the needs of the population of internal migrants.

IX. Conclusions and recommendations

99. **The Special Rapporteur welcomes the efforts undertaken by the Government to regulate labour migration and protect the rights of Nepalese citizens migrating abroad. He notes that a series of adequate legal provisions and policies are in place, which, if implemented effectively, could prevent some of the abuses that migrants currently experience during the migration process. He also notes the need for strong rights-based, enforceable agreements with all destination States.**

100. **Labour migration, if properly governed, can have a positive impact on the lives of migrants and their families, as well as on the economy as a whole. However, a poorly regulated recruitment industry takes significant resources away from migrants through the charging of recruitment fees and broader economic exploitation, thus effectively disempowering the poorest. That has a negative impact on the economy of the country as a whole. The Special Rapporteur urges the Government of Nepal to develop a holistic, cohesive and human-centred approach to migration, aimed at transition to an ethical recruitment model, involving all relevant stakeholders. Allowing the absentee population to vote, would help develop a migration policy centred on the needs, interests and human rights of those concerned.**

101. **In order to make migration a choice and not a necessity, the Special Rapporteur invites the Government to conduct a thorough study of the root causes of migration, which are often related to discrimination, domestic violence, poverty and a lack of domestic economic opportunities. The research should also look into the social impact of migration, including its gender dimension, the impact on families and communities, caste and ethnicity, and the types of abuse migrants suffer in destination countries, including the reasons for sickness and disability and the causes of death.**

102. **More focus could be placed on creating income-generating opportunities in Nepal, especially for women, youth and minorities, including in rural areas. At the same time, Nepalese who wish to migrate have the right to do so; leaving any country including one's own is a human right, which applies equally to men and women.**

103. **Considering the lack of information and the high costs which migrant workers incur in their recruitment process or upon return to Nepal, the Special Rapporteur encourages decentralization of the management of migrant workers. The decentralization of the institutional mechanisms of foreign employment would render many services and rights more accessible to all migrants. For instance, it would enhance access to information and legal remedies, and ensure more direct contact with recruitment agencies, passport offices, and skills and pre-departure training. Decentralization of recruitment agencies could give migrants direct access to the process, eliminating the chance of being cheated by sub-agents. The process of decentralization would be especially relevant in a context where many migrants come from places other than Kathmandu.**

A. Recommendations to the Government of Nepal

104. **In the light of the information received and the concerns expressed, the Special Rapporteur wishes to propose the following recommendations to the Government of Nepal. He urges the Government to consider his recommendations seriously and to implement them in cooperation with all relevant stakeholders, including the United Nations country team and civil society organizations. Technical cooperation for implementation of the recommendations could be sought from ILO.**

Strengthening the legal and policy framework

105. The Special Rapporteur recommends that the Government:

(a) **Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;**

(b) **Ratify the following ILO conventions: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Migration for Employment Convention (revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Private Employment Agencies Convention, 1997 (No. 181) and the Decent Work for Domestic Workers Convention, 2011 (No. 189);**

(c) **Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime;**

(d) **Ratify the Convention relating to the Status of Refugees and its 1967 Protocol and the Convention on the Reduction of Statelessness;**

(e) **Ensure implementation of the 2011 United Nations Guiding Principles on Business and Human Rights implementing the United Nations "Protect, Respect and Remedy" Framework;**

(f) **Invest in sufficient social protection systems and create more income-generating opportunities to ensure that poverty and discrimination do not force Nepalese nationals into labour migration;**

(g) **Develop bilateral agreements on labour migration with destination countries that are based on international standards and prioritize the full implementation of the human rights and labour rights of migrants and fully incorporate the voices of both migrants and civil society;**

(h) **Continue dialogue through the regional consultative processes, ensuring that it is guided by the long-term, holistic thinking that is needed to achieve the wholesale transition to an ethical recruitment system.**

Effective regulation, oversight and law enforcement

106. **The Special Rapporteur recommends that the Government:**

(a) **Undertake all the necessary steps to prevent the exploitation and abuse of migrants and to protect their rights during the recruitment stage, while they are in service in the destination country and upon their return to Nepal;**

(b) **Transition to an ethical recruitment model by developing country-level and regional policies on tackling exploitative and abusive recruitment practices, which bring together the perspectives of all relevant stakeholders;**

(c) **Enhance the regulation and monitoring of the recruitment industry, by putting in place a comprehensive recruitment policy with high standards, developing fully robust, transparent and publicly accountable licensing systems for recruitment companies, subject to rigorous human rights and labour law due diligence, regulating irregular sub-agents and the sanctioning of unlicensed agencies, and effectively banning all types of recruitment fees paid by migrants;**

(d) **Ensure controls are in place to prevent the re-registration of unscrupulous agencies which have had their licence revoked. Develop a rating scheme and a blacklist, in order to assess the conduct of recruitment agencies against human rights and labour standards;**

(e) **Develop independent monitoring mechanisms, equipped with the necessary resources to effectively identify abuse and exploitation, including through a system based on complaints from trade unions, the National Human Rights Commission and civil society organizations, and revoke the licences of recruitment agencies that charge fees to migrants and/or have abused their human or labour rights;**

(f) **Ensure sufficient budget is allocated to the Ministry of Labour, Employment and Social Protection for it to effectively carry out its mandate, including by introducing e-government solutions;**

(g) **Fully take into account the recommendations of the National Human Rights Commission and consult the Commission in its work on migrants;**

(h) **Standardize contracts for migrant workers within different sectors and at different skill levels. Labour contracts based on such a standardized model should specify the job description, wages and labour conditions.**

Access to justice

107. **The Special Rapporteur recommends that the Government:**

(a) **Ensure that barriers to accessing justice are removed so that effective access is available to legal remedy for violations of migrant workers' rights in the context of recruitment practices and labour migration, including through decentralization of the system;**

(b) **Repeal the relevant legislation so that migrant workers are recognized as rights holders, with defined enforceable rights and associated remedies, while granting the police more investigative powers for complaints concerning abuse and exploitation in the recruitment process, and ensure victims have access to the formal judicial system;**

(c) **Strengthen the capacity of the independent judiciary, including at the local level, to provide access to justice for migrant workers who have been exploited by recruiters and punish perpetrators in a way that creates real and lasting disincentives for the mistreatment of migrants;**

(d) **Enhance understanding through increased capacity-building, including at the local level, concerning trafficking for labour exploitation. The extension of an invitation for a country visit to the Special Rapporteur on trafficking in persons, especially women and children or the Special Rapporteur on contemporary forms of slavery, including its causes and consequences could be relevant in that regard;**

(e) **Make all the services necessary for ensuring effective access to justice for all migrant workers in destination countries easily available, such as legal aid, interpretation and translation services, information about their rights and available remedies, and humanitarian visas to return to destination countries to testify and otherwise pursue justice. Bilateral agreements between countries of origin and destination should address the provision of such services.**

Empowering migrants through information and support

108. **The Special Rapporteur recommends that the Government:**

(a) **Decentralize the institutional mechanisms of foreign employment to ensure access to services and rights for all migrants;**

(b) **Increase, improve and decentralize pre-departure training and information, including on rights and redress mechanisms, promote informed decision-making and enhance the skill levels of prospective migrants, including language and general skills;**

(c) **Make the protection of migrants a priority concern for diplomatic missions in destination States and strengthen welfare services and consular assistance, ensuring that diplomatic missions are adequately staffed and that staff are properly trained to deal with all issues faced by migrant workers. Nepalese diplomatic missions in destination States should play a more proactive role in protecting their own nationals against abuse and be properly equipped to provide assistance to those in need. They should have female officers to deal with cases of sexual abuse, provide a local hotline free of charge 24 hours a day 7 days a week, establish a roster of competent local lawyers able to help Nepalese migrants with legal issues, and conduct frequent visits to migrant detention centres, worksites and workers' accommodation;**

(d) **Facilitate the repatriation of migrants in need, including those who have escaped from abusive employers or have ended up in an irregular situation, in**

detention or elsewhere. Funding from the Foreign Employment Welfare Fund should be made available in that regard;

(e) Conduct independent autopsies on the bodies of Nepalese migrant workers who die abroad and consider the deployment of health attachés to major destination countries for that purpose;

(f) Establish a sustainable reintegration policy and enhance the services provided for the reintegration of returned migrants, including psychosocial services and livelihood opportunities, particularly for those who have experienced abuse during their migration process.

Women migrants and domestic workers

109. The Special Rapporteur recommends that the Government:

(a) Withdraw the discriminatory restrictions and bans imposed on women migrant workers;

(b) Establish a standard contract for domestic workers, to be included in all bilateral agreements, which should include provisions on, inter alia, wages, working hours, working conditions, overtime pay, annual leave and effective remedies, as set out in ILO Convention No. 189;

(c) Establish a reference wage for domestic workers, reflective of skills and experience, which should apply to all workers in all destination States and be included in bilateral agreements;

(d) Enhance pre-departure training for domestic workers, particularly focusing on language skills, skills relevant to their work and information on their rights and how to claim those rights.

Cross-cutting issues

110. The Special Rapporteur recommends that the Government:

(a) Revise the current citizenship act and civil registration laws to bring them into line with the country's international obligations, removing any discriminatory provisions;

(b) Ensure that all persons, regardless of citizenship or migration status, enjoy the rights provided for in the Constitution without any discrimination, in accordance with international human rights law;

(c) Register all Tibetan and Bhutanese refugees on its territory and provide them with proper identity documents.

B. Recommendations to destination States

111. The Special Rapporteur recommends that destination States:

(a) Extend labour protection in national law to domestic workers, including by formulating provisions related to minimum wages, payment for overtime, working hours, working conditions, days of rest, annual leave, freedom of association and social security protection, including with respect to maternity and pension rights and health insurance, as well as effective recourse and remedies. Ensure that migrants have a written contract in a language they can understand, stating their specific duties, working hours, remuneration, days of rest and other conditions of work. Model contracts should be adopted for this purpose;

(b) Prevent persons who abuse domestic workers from hiring more domestic workers in the future. Labour inspections should be undertaken on a regular basis and unannounced, including in employers' households. States should ensure that migrant domestic workers have access to complaint mechanisms and legal assistance;

(c) Put in place provisions that decrease the cost of remittances and allow for the portability of social benefits.

C. Recommendations to the private sector

112. **The Special Rapporteur recommends that the private sector:**

(a) Lead by example in the development and implementation of human rights due diligence undertaken in relation to government contracts;

(b) Prioritize and reward ethical recruitment agencies in the contracting of government work and ensure that the costs of ethical recruitment are factored into the tendering process;

(c) Have a zero-tolerance policy on the charging of fees and broader abuses of migrant workers' rights in any part of the government supply chain;

(d) Ensure regular and robust independent audits to ensure compliance.